

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1993

NORTHWEST AIRLINES, INC., SIMMONS AIRLINES, INC.,  
COMAIR, INC., MIDWAY AIRLINES (1987), INC.,  
USAIR, INC., AMERICAN AIRLINES, INC., and UNITED  
AIRLINES, INC.,

*Petitioners,*

v.

COUNTY OF KENT, MICHIGAN, THE KENT COUNTY BOARD  
OF AERONAUTICS, and THE KENT COUNTY DEPARTMENT  
OF AERONAUTICS,

*Respondents.*

On Writ of Certiorari to the  
United States Court of Appeals  
for the Sixth Circuit

**JOINT APPENDIX**

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## **EDITOR'S NOTE**

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## **TABLE OF CONTENTS**

	<b>Page</b>
Relevant Docket Entries .....	1
Opinions of the United States Court of Appeals for the Sixth Circuit .....	15
Defendants' Interrogatory No. 10 and Plaintiffs' Re- sponses .....	37
Plaintiffs' Proposed Finding of Fact No. 24 .....	39
Excerpts from Deposition Testimony of John Sorenson..	40
Excerpts from Deposition Testimony of Mark W. Fisher .....	42
Excerpts from Deposition Testimony of Jerome J. Barnack .....	46
Excerpts from Deposition Testimony of Paul Hegedus..	50
Excerpts from Deposition Testimony of Robert M. Ross .....	50
Excerpts from Deposition Testimony of Harold Peder- son .....	55
Excerpts from Deposition Testimony of Sandra Doncal..	56
Excerpts from Deposition Testimony of Charles W. Seaman .....	60
Excerpts from Trial Testimony of Richard K. Dompke..	65
Excerpts from Trial Testimony of Charles T. Horn- gren .....	91
Excerpts from Trial Testimony of Dean Nitz .....	108
Excerpts from Trial Testimony of Robert M. Ross .....	112
Excerpts from Trial Testimony of Harold Pederson....	118
Excerpts from Trial Testimony of David Groenleer....	127
Excerpts from Trial Testimony of David Waichum .....	129
Excerpts from Trial Testimony of Brian Picardat .....	130
Excerpts from Trial Testimony of John F. Brown .....	139
Excerpts from Trial Testimony of Professor Ferdinand K. Levy .....	173



## TABLE OF CONTENTS—Continued

	Page
Fees for the Use of Public Aircraft Facilities and Rental for Passenger Terminal Premises, Kent County International Airport, Three Years Beginning January 1, 1987 (Plaintiffs' Trial Exhibit 6) .....	193
Rental Fee Recommendations, James C. Buckley (February 1969) (Plaintiffs' Trial Exhibit 20) (exhibits thereto omitted) .....	223
Plaintiffs' Trial Exhibit 24 .....	276
Grand Rapids Airport Net Income Analysis (1987 & 1988) (Plaintiffs' Trial Exhibit 301) .....	278
Grand Rapids Airport Net Income and Cash Flow Analysis (1989) (Plaintiffs' Trial Exhibit 355) .....	279
Defendants' Trial Exhibit DA23 .....	280
Defendants' Trial Exhibit DA35A .....	286
Assurances—Airport Sponsors (Defendants' Trial Exhibit DA35B) .....	289
Airline Revenues Per Passenger, Grand Rapids (Defendants' Trial Exhibit DA36) .....	312
Airline/Airport Expenses as Percent of Passenger Revenues, Grand Rapids (Defendants' Trial Exhibit DA37) .....	313
Net Takedown Percentage (Defendants' Trial Exhibit DA42) .....	314
Revenue Category as % of Operating Revenue, Grand Rapids and the Mean of Six Like-Sized Airports (Defendants' Trial Exhibit DA43) .....	316
Airport Revenues per Enplaned Passenger (Defendants' Trial Exhibit DA44) .....	318
Deposition Exhibit DX-I .....	320
Deposition Exhibit DX-PP .....	322

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
(GRAND RAPIDS)

Docket No. G88-243

NORTHWEST AIRLINES, INC., SIMMONS AIRLINES, INC.,  
PIEDMONT AVIATION, INC., COMAIR, INC., MIDWAY  
AIRLINES, INC., USAIR, INC., and AMERICAN AIR-  
LINES, INC., UNITED AIR LINES, INC., MIDWAY AIR-  
LINES (1987), INC.,

*Plaintiffs,*

v.

COUNTY OF KENT, MICHIGAN, and  
THE KENT COUNTY DEPT. OF AERONAUTICS,  
*Defendants.*

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1988		
4/1/88	1	COMPLAINT.
5/9/88	9	AMENDED COMPLAINT by Northwest Airlines, Inc., Simmons Airlines, Inc., Piedmont Aviation, Inc., Comair Inc., Fischer Bros. Aviation, Inc. d/b/a Midway Commuter; US Air, Inc., American Airlines, Inc. and United Air Lines, Inc. w/Certificate of Service
5/10/88	10	ANSWER, Affirmative Defenses, and Counter-claim of Deft. The Kent County Aeronautics Board w/Proof of Service
5/20/88	11	ANSWER to Amended Complaint by Deft. County of Kent
5/20/88	12	COUNTERCLAIM by Deft. County of Kent

DATE	NR.	PROCEEDINGS
5/31/88	16	ANSWER by Deft. Kent County Aeronautics Board to Amended Complaint, Affirmative Defenses, and Counter-claim of Deft. w/Proof of Service
6/27/88	19	REPLY by pltfs to deft Kent County Aeronautics Board's Counterclaim w/Affirm. Defenses, MOTION to Dismiss Counterclaim for Injunction and Certificate of Service
6/27/88	20	MOTION by pltfs to Dismiss w/Brief, Certificate of Service and attachments
10/12/88	28	JOINT F.R.C.P. 16 Status Conference Report
11/8/88	31	STIPULATION with reference to the landing fees, rental charges, and other payments to be made to the Airport by the airline Plaintiffs pending the decision of this Court —copies mailed to Atty. Hunting for dist.
11/9/88	34	SECOND AMENDED COMPLAINT by pltfs
12/16/88	40	TRANSCRIPT OF STATUS CONFERENCE BEFORE Judge Bell on 10-17-88
1989		
1/5/89	43	ANSWER to Second Amended Complaint, Affirmative Defenses and Counter-Claim of Deft., The Kent County Aeronautics board
1/13/89	46	MOTION FOR PARTIAL SUMMARY JUDGMENT of Kent County Cross-FRCP 56 Dismissing pltfs' Allegations as to the Illegality of Airport Methodology for Determining User Fees and Rental Rates; Affidavit of David L. Waichum in Support; Proof of Service; Notice of Motion set on 2-22-89 at 8:30 a.m.
1/13/89	47	MEMORANDUM IN SUPPORT of FRCP 56 Motion for partial Summary Judgment of deft County of Kent, Michigan (O/S) (pldg. #46)

DATE	NR.	PROCEEDINGS
1/13/89	48	MOTION FOR PARTIAL SUMMARY JUDGMENT of Airport Cross-FRCP 56 Dismissing pltfs' Allegations as to the Illegality of the Airport Methodology for Determining User Fees and Rental Rates; Affidavit of Robert M. Ross in Support w/ Exhibits A-1, B-1 & C-1; Notice of Hearing set for 2-22-89 at 8:30 a.m.; Proof of Service
1/13/89	49	MEMORANDUM IN SUPPORT of FRCP 56 Motion for partial Summary Judgment of Airport (O/S) (pldg. #48)
1/13/89	50	TABLE OF CONTENTS OF defts' Bench Book of Exhibits A-H
1/12/89	52	MOTION by pltfs. For Summary Judgment, Brief in Support (O/S) w/attach Exhibits, Affidavit of Daniel R. Hindes, Affidavit of Charles t. Horngren w/attach Exhibits, Affidavit of Richard K. Dompke
1/13/89	53	DEPOSITION TRANSCRIPT of Harold Peterson taken on 12-13-88 at Grand Rapids, Mi. in support of #52
1/13/89	54	DEPOSITION TRANSCRIPT of Sandra Doncal taken on 12-14-88 at Grand Rapids, Mi. in support of #52
1/13/89	55	AFFIDAVIT Of Ferdinand K. Levy In Support of Defts' FRCP 56 Motion for Partial Summary Judgment w/Exhibits A-D and Proof of Service
1/13/89	56	DEPOSITION EXHIBITS 1-4 In Support of Depositions #53 & #54
1/13/89	57	DEPOSITION EXHIBITS 5-10 In Support of Depositions #53 & #54
1/13/89	58	DEPOSITION EXHIBITS 11-25 In Support of Depositions #53 & #54

DATE	NR.	PROCEEDINGS
1/23/89	60	REPLY of Pltfs to Counterclaim of the Kent County Aeronautics Board; Certificate of Service
2/9/89	61	ANSWER of deft County of Kent to pltf's Second Amended Complaint and Affirmative Defenses; Proof of Service
2/9/89	62	REPLY MEMORANDUM of Deft. Kent County to Pltfs' Cro[s]s FRCP 56 Motion for summary Judgment w/Proof of Service
2/9/89	63	REPLY MEMORANDUM Of Deft. Airport in Support of FRCP 56 Motion For Partial Summary Judgment Dismissing Plaintiffs' Allegations As To The Illegality of the Airport User Fee and Rental Rate Methodology
2/9/89	64	AFFIDAVIT of Sandra L. Doncal in support of Reply Memorandum (#63)
2/9/89	65	SUPPLEMENTAL REPLY AFFIDAVIT Of Ferdinand K. Levy in Support of Defts' FRCP Motion For partial Summary Judgment
2/9/89	66	FRCP 56 AFFIDAVIT OF DEAN C. NITZ w/attchs
2/9/89	67	AFFIDAVIT of John F. Brown In Support of Defts' FRCP 56 Motion For Partial Summary Judgment Dismissing Plaintiffs' Allegations as To The Illegality of The Airport User Fee and Rental Rate Methodology w/ Exhibit A
2/9/89	68	SUPPLEMENTAL BENCH BOOK OF Exhibits by Defts'
2/9/89	70	BRIEF Of Airlines In Response to Memorandum of Deft, County of Kent w/unsigned Proof of Service & Attchs.
2/9/89	71	SUPPLEMENTAL AFFIDAVIT Of Richard K. Dompke w/unsigned Proof of Service w/Exhibits S,T,U,V

DATE	NR.	PROCEEDINGS
2/9/89	73	BRIEF of Airlines In Response To Memorandum and Motion For Partial Summary Judgment of the Kent County Aeronautics Board O/S w/unsigned Proof of Service w/attchs
2/22/89	—	ORAL ARGUMENTS held before Judge Bell; Cross-Motions; Partial Summary Judgment; taken under advisement
3/13/89	76	MOTION by Defts To Supplement The current FRCP 56 Record By Adding Items J,K,L, and M To Defendants' Bench Book of Exhibits In Support of Defendants' Motion For Partial Summary Judgment Regarding The Alleged Illegality of the Airport Rate-Making Methodology, or alternatively, Defendants' F.r.E. 201 Motion For the Taking of Judicial Notice of Said Items J,K,L, and M
3/13/89	77	LEGAL MEMORANDUM of Defts. In Support of #76
3/16/89	79	BRIEF IN OPPOSITION TO DEFTS' Motion to Supplement the Record or to Take Judicial Notice of Certain Documents by pltf Airlines w/Exhibit A
5/4/89	80	TRANSCRIPT by Court Reporter of Cross-Motions for Partial Summary Judgment heard by Judge Bell on 2-22-89
6/22/89	81	OPINION by Judge Bell denying pltf Airlines' motion for summary Judgment on limited issue; copies mailed to attys Mallette, Wagner, Hunting and Kay (15 pgs)
6/22/89	82	ORDER in accordance with Opinion dated 6-22-89; copies mailed to attys Mallette, Wagner, Hunting and Kay (1 pg)



DATE	NR.	PROCEEDINGS
1/2/90	98	MOTION by defendant Kent, County of; defendant Kent Cty Dept Aeronautics Board for summary judgment, for dismissal of all of pltfs' claims; Memorandum in Support (O/S) w/Exhibit A; Notice of Hearing for 1/18/90 at 9:00 a.m. in Lansing, MI; Proof of Service (lkd) [Entry date 01/03/90]
1/12/90	109	RENEWED MOTION by plaintiffs for partial summary judgment; Response Brief to defts' Renewed Motion for Summary Judgment and Motion to Dismiss and Renewal of Pltfs' Motion for Partial Summary Judgment (O/S); Notice of Hearing set for 1/18/90 at 9:00 a.m.; Certificate of Service (lkd)
1/12/90	109	RESPONSE by plaintiffs to defts' motion for summary judgment [98-1] and motion for dismissal of all of pltfs' claims [98-2] (ATTACHED AS BRIEF IN SUPPORT TO PLTFS' RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT (#109)) (lkd)
1/16/90	113	MEMORANDUM IN OPPOSITION (REPLY) by defendants to pltfs' response to defts' renewed motion for partial summary judgment [109-1]; pltfs' Exhibit 24; deposition exhibit #34 (lkd) [Entry date 01/17/90]
1/18/90	119	AFFIDAVIT (Original) of John F. Brown replacing affidavit [112-1] (ldm) [Entry date 01/22/90]
1/18/90	—	HEARING before Judge Robert Holmes Bell on defendant's motion to dismiss—granted in part and denied in part; plaintiff's motion for partial summary judgment—denied. Order to enter by the court. (ldm) [Entry date 01/22/90]

DATE	NR.	PROCEEDINGS
1/22/90	120	OPINION (7 pages) by Judge Robert Holmes Bell (copies mailed to Attys. Mallette, Wagner, Hunting & Kay) (ldm)
1/22/90	121	ORDER (2 pages) by Judge Robert Holmes Bell denying plaintiff's motion for partial summary judgment [109-1] granting defendant's motion for dismissal with regard to claims under the Airport and Airway Improvement Act and the Interstate Commerce Clause and denying defendants' motion to dismiss with regard to claims under Anti-Head Tax Act (copies mailed to Attys. Mallette, Wagner, Hunting & Kay) claims [98-2] (cc: all (ldm)
1/22/90	125	DEPOSITION (TRANSCRIPT) of Jerome J. Barnack taken on 11/17/89 at 9:00 a.m. in Grand Rapids, MI, filed by defendant Kent County Dept Aeronautics (received in Lansing on 1/24/90) (lkd) [Entry date 01/25/90] [Edit date 01/25/90]
1/22/90	126	DEPOSITION (TRANSCRIPT) of Paul Hegedus taken on 11/17/89 at 1:30 p.m. in Grand Rapids, MI, filed by defendant Kent County Dept Aeronautics (received in Lansing on 1/24/90) (lkd) [Entry date 01/25/90] [Edit date 01/25/90]
1/22/90	127	DEPOSITION (TRANSCRIPT) of Carolyn Carlton Lowe taken on 11/16/89 at 9:00 a.m. in Grand Rapids, MI, filed by defendant Kent County Dept Aeronautics (received in Lansing on 1/24/90) (lkd) [Entry date 01/25/90]
1/22/90	128	DEPOSITION (TRANSCRIPT) of John Sorenson taken on 11/15/89 at 9:00 a.m. in Grand Rapids, MI, filed by defendant Kent County Dept Aeronautics (received in Lansing on 1/24/90) (lkd) [Entry date 01/25/90]



DATE	NR.	PROCEEDINGS
1/22/90	129	DEPOSITION (TRANSCRIPT) of Charles W. Seaman taken on 12/14/89 at 8:00 p.m. in Grand Rapids, MI, filed by defendant Kent County Dept Aeronautics (received in Lansing on 1/24/90) (lkd) [Entry date 01/25/90]
1/30/90	130	STIPULATION AND ORDER regarding trial evidence (4 pgs) by Judge Robert Holmes Bell: (cc Bransdorfer for dist.) (lkd) [Entry date 01/31/90]
2/1/90	132	TRANSCRIPT filed by defendant Kent County Aeronautics Board of deposition of Daniel R. Hindes taken on 12/13/89 at Grand Rapids, MI. (ldm) [Entry date 02/05/90]
2/2/90	131	TRIAL BRIEFS submitted by defendants w/atchs. (ldm) [Entry date 02/05/90]
2/2/90	133	TRIAL BRIEFS submitted by plaintiff Airlines w/attached Exhibits and Proof of Svc. (ldm) [Entry date 02/05/90]
2/6/90	134	OBJECTIONS by plaintiff Airlines to introduction of evidence at trial, brief in support, and proof of svc. (ldm) [Entry date 02/09/90]
2/9/90	135	MEMORANDUM IN OPPOSITION by defendants re pltfs' objections to evidence regarding comparable airport data [134-1]; with attachments (lkd)
2/9/90	136	STIPULATION Regarding Interim Un-audited 1989 Financial Statements of the Airport w/proof of svc. (ldm) [Entry date 02/13/90]
2/12/90	137	PRETRIAL ORDER approved (41 pages) (copies mailed to Atty. Bransdorfer for dist.) (ldm) [Entry date 02/13/90]
2/12/90	—	NON-JURY TRIAL before Judge Robert Holmes Bell—Day 1 (ldm) [Entry date 02/13/90]

DATE	NR.	PROCEEDINGS
2/13/90	—	NON-JURY TRIAL—Day 2 (ldm) [Entry date 02/14/90]
2/14/90	—	NON-JURY TRIAL—Day 3 (ldm) [Entry date 02/16/90]
2/15/90	—	NON-JURY TRIAL—DAY 4 (ldm) [Entry date 02/22/90]
2/16/90	—	NON-JURY TRIAL—DAY 5 (ldm) [Entry date 02/22/90]
2/20/90	—	NON-JURY TRIAL—DAY 6 (ldm) [Entry date 02/22/90]
2/21/90	—	NON-JURY TRIAL—DAY 7—proofs completed—findings of fact and conclusion of law to be filed by 3-16-90. Oral arguments set for 3/21/90. (ldm) [Entry date 02/22/90]
2/28/90	139	STIPULATION as to Airport History (lkd)
3/6/90	141	MOTION by defendants Kent County & Kent Cty Dept Aeron to reopen supplement trial record by adding Exhibits 4A, 5 and 21 [141-1] notice of hearing on 3/20/90 at 1:30 p.m. at Lansing, MI (ldm)
3/16/90	142	PROPOSED FINDINGS OF FACT and PROPOSED CONCLUSIONS OF LAW submitted by defts; attachments
3/16/90	143	PROPOSED FINDINGS OF FACT and CONCLUSIONS OF LAW submitted by pltf Airlines
3/20/90	—	NON-JURY TRIAL—Day 8—closing arguments before Judge Robert Holmes Bell. Defendant's Motion GRANTED to supplement trial record by adding Exhibits 4A, 5 and 21 [141-1] and plaintiff's counter motion to add exhibits [144-1] DENIED—court to enter opinion. (ldm) [Entry date 03/22/90] [Edit date 03/23/90]

DATE	NR.	PROCEEDINGS
6/18/90	146	OPINION (20 pgs) by Judge Robert Holmes Bell (cc: Allard, Hunting, Wagner & Mallette) (lkd) [Entry date 06/21/90]
6/18/90	147	JUDGMENT: (2 pgs) by Judge Robert Holmes Bell terminating case; Court finds for defts on all allegations of pltfs' second amended complaint except for the allegation that the aircraft parking fee is unreasonable; Court finds for defts on their counterclaim; Ordered that defts recalculate the aircraft parking fee to recover funds equal to but not greater than the costs of providing the aircraft parking area; Ordered that pltfs are to pay defts the difference between the Prior Rates and the Ordinance Rates for the period of time from 4/1/88 to date of this judgment w/an adjustment for the overpayment of the aircraft parking fee; pltfs must pay the Ordinance Rates with the recalculation for the aircraft parking fee as of the date of this judgment (cc: Allard, Hunting, Wagner & Mallette) (lkd) [Entry date 06/21/90]
7/16/90	148	NOTICE OF APPEAL by pltfs' from Dist. Court decision entered on 6/18/90 except from that portion of the final judgment holding that the aircraft parking fee is unreasonable and Certificate of Service [147-2] (dmh) [Entry date 07/25/90]
8/31/90	160	TRANSCRIPT FOR hearing held 1-18-90 re cross-motions for summary judgment (rj) [Entry date 09/18/90]
8/31/90	161	TRIAL TRANSCRIPT INDEX filed (rj) [Entry date 09/18/90]
8/31/90	162-169	TRIAL TRANSCRIPT (Vol. I-Vol. VIII)

DATE	NR.	PROCEEDINGS
9/4/90	170	MEMORANDUM OPINION AND ORDER (5 pgs) w/Exhibit A setting forth computation of damages by Judge Robert Holmes Bell denying motion for entry of monetary, final judgment (including award of appropriate past interest), and MOTION to set aside the premature Notice of Appeal filed by pltfs' [157-1] (cc: all counsel on 9/14/90; remailed on 9/17/90 w/attached Ex A) (rj) [Entry date 09/18/90]
9/13/90	171	TRANSCRIPT of deposition of Mark W. Fischer taken 11-16-89 by deft Kent Co. Aeronautics Bd. (rj) [Entry date 09/18/90]
9/13/90	172	TRANSCRIPT of deposition of Robert M. Ross taken 12-12-89 (rj) [Entry date 09/18/90] [Edit date 09/19/90]
9/13/90	173	TRANSCRIPT of deposition of Robert M. Ross continued to 12-13-89 (rj) [Entry date 09/18/90] [Edit date 09/19/90]
9/13/90	174	TRANSCRIPT of deposition of Robert M. Ross continued to 12-14-89 (rj) [Entry date 09/18/90] [Edit date 09/19/90]
10/3/90	186	NOTICE OF APPEAL by plaintiffs' from Dist. Court decisions entered on 9/4/90, 6/18/90 and 1/22/90 [170-1] with certificate of service (dmh) [Entry date 10/10/90]

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No. 90-2117

NORTHWEST AIRLINES, INC.; SIMMONS AIRLINES, INC.;  
PIEDMONT AVIATION, INC.; COMAIR, INC.; MIDWAY  
AIRLINES (1987), INC., formerly known as Fischer  
Brothers Aviation, Inc.; USAIR, INC.; AMERICAN AIR-  
LINES, INC.; UNITED AIR LINES, INC.,  
*Plaintiffs-Appellants*

v.

COUNTY OF KENT, MICHIGAN; THE KENT COUNTY BOARD  
OF AERONAUTICS; THE KENT COUNTY DEPARTMENT  
OF AERONAUTICS,  
*Defendants-Appellees*

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
12/27/90	BRIEF filed by Malcolm C. Mallette for Appellants Northwest Airlines, Simmons Airlines, Piedmont Aviation, Comair, Midway Airlines, USAir, AA, United Air Lines in 90-1811/2117. Copies: 10. Certificate of service date 12/26/90 [90-1811, 90-2117] (teb) [90-1811 90-2117]
1/28/91	BRIEF filed by Mark S. Allard for Appellee Cnty of Kent in 90-2117/1811. Copies: 10. Certificate of service date 1/25/91 [90-2117, 90-1811] (teb) [90-1811 90-2117]
1/28/91	BRIEF filed by W. Fred Hunting for Appellee Kent Cnty Br of Aero, Kent Cnty Dept Aero in 90-2117/1811. Copies: 11. Certificate of service date 1/25/91 [90-2117, 90-1811] (teb) [90-1811 90-2117]

DATE	PROCEEDINGS
1/30/91	BRIEF TENDERED. Received from Thomas E. Devine for amicus curiae Airport Operators Council International [90-2117]. Certificate of service date 1/30/91 Corrections to be made: none; motion required for leave to file brief. (teb) [90-2117]
2/15/91	REPLY BRIEF filed by Malcolm C. Mallette and Mark S. Brandsdorfer for Appellants Northwest Airlines, Simmons Airlines, Piedmont Aviation, Comair, Midway Airlines, USAir, AA, United Air Lines in 90-1811/2117. Copies: 11. Certificate of service date 2/14/91 [90-1811, 90-2117] (teb) [90-1811 90-2117]
3/6/91	APPENDIX filed by Walter A. Smith for appellants. Copies: 5 [4 vols]. Certificate of service date 3/5/91 [90-1811, 90-2117] (pje) [90-1811 90-2117]
8/13/91	CERTIFIED RECORD filed. Volumes include 13 Tr; 12 Dep; 20 Pl. [90-1811, 90-2117] (dtk) [90-1811 90-2117]
9/6/91	ORDER filed granting motion to allow Airport Operators Council Intl. leave to file amicus curiae brief [375003-1] [90-1811, 90-2117]. Entered by order of the court. (stj) [90-1811 90-2117]
9/23/91	CAUSE ARGUED by Walter A. Smith for Appellant United Air Lines, Appellant AA, Appellant USAir, Appellant Midway Airlines, Appellant Comair, Appellant Piedmont Aviation, Appellant Simmons Airlines, Appellant Northwest Airlines in 90-2117, W. Fred Hunting for Appellee Kent Cnty Dept Aero, Appellee Kent Cnty Br of Aero in 90-2117 before Judges Kennedy, Nelson, Contie. [90-2117] (paw) [90-2117]
2/3/92	OPINION filed: REVERSED and remanded in order that the costs associated with CFR services may be properly allocated between the airlines



DATE	PROCEEDINGS
	and general aviation. With regard to the Airlines' claim that the concessions are under-assessed for their associated costs and that the Airlines are entitled to be cross-credited for surplus revenue generated by concession fees, the decision is AFFIRMED [90-1811, 90-2117]. Decision for publication. Cornelia G. Kennedy, Authoring Judge, David A. Nelson, dissenting, Leroy J. Contie, Senior Judge. (stj) [90-1811 90-2117]
2/3/92	JUDGMENT: AFFIRMED in part REVERSED and remanded [90-1811, 90-2117]. (stj) [90-1811 90-2117]
2/18/92	PETITION for en banc rehearing filed by Walter A. Smith for Appellant Northwest Airlines, et al. Certificate of service date 2/14/92. [90-1811, 90-2117] (blc) [90-1811 90-2117]
3/31/92	RESPONSE to a petition for en banc rehearing [547825-1]; previously filed by Walter A. Smith Jr., Walter A. Smith Jr. in 90-1811, 90-2117. Response filed by Mark S. Allard for Appellee Cnty of Kent in 90-1811, et al. Certificate of service date 3/30/92. [90-1811, 90-2117] (blc) [90-1811 90-2117]
4/16/92	ORDER filed denying petition for en banc rehearing. [90-1811, 90-2117] in 90-1811, 90-2117. Cornelia G. Kennedy, Circuit Judge, David A. Nelson, Circuit Judge, Leroy J. Contie, Senior Judge. (stj) [90-1811 90-2117]
5/7/92	ORDER (Dissent) filed: Chief Judge Merritt's dissent from failure to grant en banc rehearing for petition that was denied 4/16/92. [90-1811, 90-2117] (stj) [90-1811 90-2117]

UNITED STATES COURT OF APPEALS  
SIXTH CIRCUIT

Nos. 90-1811, 90-2117

NORTHWEST AIRLINES, INC.; SIMMONS AIRLINES, INC.;  
PIEDMONT AVIATION, INC.; COMAIR, INC.; MIDWAY  
AIRLINES, INC.; USAIR, INC.; AMERICAN AIRLINES,  
INC.; and UNITED AIRLINES, INC.,

*Plaintiffs-Appellants,*

v.

COUNTY OF KENT, MICHIGAN; THE KENT COUNTY  
BOARD OF AERONAUTICS; and THE KENT COUNTY  
DEPARTMENT OF AERONAUTICS,

*Defendants-Appellees.*

Argued Sept. 23, 1991

Decided Feb. 3, 1992

Douglas E. Wagner, Christopher C. Williams, Mark S. Brandsdorfer (briefed), Warner, Norcross & Judd, Grand Rapids, Mich., Walter A. Smith, Jr. (argued), Hogan & Hartson, Washington, D.C., Malcolm C. Mallette (briefed), James G. McIntire, Kreig, DeVault, Alexander & Capehart, Indianapolis, Ind., for plaintiffs-appellants.

Richard A. Kay, Mark S. Allard (briefed), Varnum, Riddering, Schmidt & Howlett, W. Fred Hunting, Jr. (argued), briefed, Robert A. Buchanan, Law, Weathers & Richardson, Grand Rapids, Mich., for defendants-appellees.

Before KENNEDY and NELSON, Circuit Judges, and  
CONTIE, Senior Circuit Judge.



KENNEDY, Circuit Judge.

Northwest, Simmons, Piedmont Aviation, Comair, Midway, USAir, American and United Airlines dispute the landing fees, terminal building rental rates, carrying charges, and crash/fire/rescue charges assessed them at the Kent County International Airport serving Grand Rapids, Michigan. The Airlines also argue that surplus revenue generated by the fees charged non-airline concessions should be cross-credited to reduce the fees charged to the Airlines. For the reasons stated below, we REVERSE and REMAND to the District Court to determine the proper allocation of fees between the Airlines and general aviation in regard to crash, fire and rescue costs. We AFFIRM the District Court's dismissal of the Airlines' claims under the Airport and Airway Improvement Act of 1982 and the Commerce Clause, its finding that the Airlines have no right to be cross-credited for concession revenues, the finding that the allocation of terminal rental fees between the Airlines and concessions were reasonable, and the finding that the method the airport used to assess airside operation fees for general aviation and the Airlines was reasonable.

# I.

The Kent County International Airport ("Airport") is operated by the Kent County Aeronautics Board and the Kent County Department of Aeronautics ("defendants"), both departments of Kent County. The County is the owner and landlord of the Airport and its facilities. The Airport was originally financed by the issuance of general obligation bonds which were later retired through a tax levy. The Airport is a relatively small hub airport whose primary passengers consist of people with Western Michigan origins or destinations. The Airport is serviced by Northwest, Simmons, Piedmont Aviation, Comair, Midway, USAir, American and United Airlines ("Airlines").

The accounting methodology used by the Airport views the Airport as the landlord, and all users as tenants. This accounting system, developed by James C. Buckley, is known as the Buckley or compensatory "methodology" and is widely used by airports.<sup>1</sup> The system is designed so that the Airlines are only charged for the land costs, physical facilities and other expenses which can be directly allocated to them. When using this system, the Airport first determines the cost basis of the land and facilities. Next, the usage of all areas is calculated and the various users are assigned rents that reflect their usage level. The costs are primarily divided among three groups: the Airlines, non-airline concessions, and general aviation.<sup>2</sup> These users enter into leases with the Airport which establishes the fees and rates to be charged.

The Airlines and the Airport negotiated and agreed on the fees to be charged through December 31, 1986. In 1986, a new rate study resulted in increased fees and the Airlines and Airport could not reach an agreement. Finally, on March 10, 1988, the airport passed an ordinance which unilaterally increased the fees. On April 1, 1988, this case was filed challenging the ordinance rates and the rates charged subsequent to December 31, 1986.<sup>3</sup> The Airlines specifically dispute the landing fees of 70.21 cents per 1,000 lbs., the terminal building rental rates, the carrying charge, the fact that general aviation was

<sup>1</sup> See Report from James C. Buckley, *Fees for the Use of Public Aircraft Facilities and Rental for Passenger Terminal Premises, for Freight Terminal Premises, for Rentable Buildings, and for Ground Space: Kent County Airport*, (February 1969).

<sup>2</sup> The term "general aviation" encompasses corporate aircraft and privately owned aircraft that are not used for transportation of military, public passengers, or cargo. The District Court found that over 160 general aviation craft are based at the Kent County Airport. *Northwest Airlines, Inc. v. County of Kent, Mich.*, 738 F.Supp. 1112, 1114 (W.D.Mich.1990).

<sup>3</sup> The Airlines amended their complaint on May 9, 1988 and again on November 9, 1988.

not also charged based on their costs, and the Airport's allegedly excessive fund balance.

## II.

Prior to the trial in this case, the District Court ruled on cross motions for summary judgment. The District Court held that the Airlines did have a private right of action under the Anti-Head Tax Act ("AHTA") and denied the Airport's motion for summary judgment. It also held, however, that the Airlines had no right of action under the Airport and Airway Improvement Act or the Interstate Commerce Clause of the United States Constitution. We agree with the District Court.

The defendants first claim that the Airlines are precluded from challenging the current rates in federal court under either the AHTA or Airport and Airway Improvement Act of 1982 ("AAIA") because they failed to exhaust their administrative remedies. The defendants argue that the Airlines must first raise any claims with the Secretary of Transportation under the AAIA before any claims may be made in the District Court. In *Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975), the Supreme Court established four factors to be used in determining whether Congress intended to create an implied right of action. These factors are:

First, is the plaintiff "one of the class for whose *especial* benefit the statute was enacted" . . . ? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?

*Id.* at 78, 95 S.Ct. at 2088 (quoting *Texas & Pacific Ry. Co. v. Rigsby*, 241 U.S. 33, 39, 36 S.Ct. 482, 484, 60 L.Ed. 874 (1916)) (emphasis in original; citations omitted). The Supreme Court has placed increasing emphasis on the second factor—the intent of Congress. *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575-76, 99 S.Ct. 2479, 2489, 61 L.Ed.2d 82 (1979); *Niagara Frontier Transp. Auth. v. Eastern Airlines Inc.*, 658 F. Supp. 247 (W.D.N.Y. 1987).

Several courts have found that the AHTA satisfies all the *Cort* factors and that a private right of action exists. *Interface Group, Inc. v. Massachusetts Port Auth.*, 816 F.2d 9 (1st Cir.1987); *Niagara*, 658 F.Supp. at 247. Most importantly, the intent of Congress to grant a private right of action seems inherent in the language of the statute satisfying the second *Cort* factor. The AHTA expressly prohibits states from levying "a tax, fee, head charge, or other charge, directly or indirectly. . . ." 49 U.S.C.A. App. § 1513(a) (West Supp.1991). As noted by the First Circuit, this statute does not mention the Secretary of Transportation nor an administrative or judicial enforcement scheme like those created in similar statutes. *Interface Group*, 816 F.2d at 16. In addition, the other *Cort* factors are also met. Private enforcement furthers the purposes of the statute by ensuring that airlines will file claims that individuals may lack the time and expenses to pursue. The AHTA also clearly identifies the class to be protected. We find that the Airlines had no duty to exhaust administrative remedies as to the statutory claims made under section 1513.

The Airlines face different administrative requirements under 49 U.S.C.A. App. § 2210, the AAIA. A review of the *Cort* factors indicate that Congress intended that there would be no private right of action under section 2210. The statute provides that assurances must be given to the Secretary of Transportation regarding the reasonable terms and rates of an airport development project.



49 U.S.C.A. App. § 2210 (West 1991); *Interface Group*, 816 F.2d at 15. This provision indicates that Congress intended to establish an administrative enforcement scheme.<sup>4</sup> The AHTA and the AAIA do not cover similar issues or provide similar remedies. The AHTA addresses state taxation of air commerce for which recovery of unreasonable taxation or fees would be the remedy. The AAIA, on the other hand, requires certain assurances to be made prior to approval of an airport development project. Failure to make these assurances would result in denial of the grant. For this reason, all claims against the defendants under the AAIA were properly dismissed for failure to exhaust administrative remedies.

Second, the defendants assert that the Airlines are estopped or have waived their rights to object to the methodology and fees adopted by the defendants. They base this argument on the Airlines' failure to protest the fees during the twenty previous years. As support, they point to a December 22, 1983 letter from John Sorensen of United Airlines, then serving as the negotiator for all the Airlines, which they claim acknowledges the reasonableness of the rates. The defendants' argument is without merit.

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<sup>4</sup> The Airlines argue that they are entitled to claim the protection of section 2210 despite the language giving responsibility to the Secretary of Labor. They place reliance on *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines*, 405 U.S. 707, 721, 92 S.Ct. 1349, 1357, 31 L.Ed.2d 620 (1972), which applies the predecessor to section 2210 in determining Congressional intent regarding airport fees. *Evansville* involved a suit by the airlines against an airport. The airlines in *Evansville*, protesting the fees being applied by the airport, filed suit claiming that the fees were an unconstitutional burden on interstate commerce. The predecessor to section 2210, 49 U.S.C.A. § 1718(a) (8), was referred to as evidence that Congress did not intend to deny or preempt state or local power to levy charges to defray the cost of an airport. No reference was made as to whether the airlines would have had a private right of action under section 1718.

The complaint filed by the Airlines clearly states that the protested fees were reportedly adopted on March 10, 1988 and became effective on April 1, 1988. The past fees referred to in the complaint are only those fees assessed subsequent to the contract which expired on December 31, 1986. The assessed fees do not represent rates which were agreed upon after negotiation. Rather, they are fees which were charged during the negotiation period. None of the protested fees or the requested remedies involves fees assessed under past contracts. The Airlines are not precluded from bringing a judicial challenge to rates because in the past they agreed to different assessed rates. The rates agreed to in the past are the result of negotiations between the Airlines, the County, and the Airport. *Northwest Airlines, Inc. v. County of Kent, Mich.*, 738 F.Supp. 1112, 1114 (W.D.Mich.1990). Only in 1988, when negotiations were unproductive, were these claims brought.

Finally, defendants argue that the Airlines do not have standing to raise issues based on rates, fees or charges to passengers and other non-aeronautical users of the airport. Defendants assert that the Airlines must show a causal connection between the damages they claim and the defendants' acts. *See In Re Air Passenger Computer Reservation Sys.*, 727 F.Supp. 564, 568 (C.D.Cal.1989). While it is clear that section 1513 gives the airlines a private right of action, the private right of action given in the statute to passengers may not be asserted by the airlines. The legislative history of the AHTA recognizes that by banning unreasonable taxes on the carriage of air passengers, the statute also prevents those unreasonable taxes from being passed on to the consumer. *See S.Rep. No. 12, 93d Cong. 1st Sess., reprinted in 1973 U.S. Code Cong. & Admin.News 1434, 1451; Interface Group*, 816 F.2d at 16. Thus, the airlines ensure fair rates in a situation where the charges may be passed through the airlines to the consumer. Individual consumers in these situations may not contest the charges because of finan-

cial or time constraints. However, this reasoning does not apply in cases where the charges are being assessed directly to the passengers or other airport users. In these cases, users felt the direct impact of the charges and many, such as the concessionaire, are capable of asserting the claims. For the above reasons, we find that the Airlines have no standing to assert the claims of the non-airline airport users or passengers.

### III.

The AHTA prohibits the imposition of any fee on "persons traveling in air commerce or on the carriage of persons traveling in air commerce" which are unreasonable. 49 U.S.C.A. App. § 1513(a) (West Supp. 1991). Reasonable fees on "aircraft operators for the use of airport facilities" are allowed.<sup>5</sup> The statute does not provide guidance for determining what constitutes a reasonable fee. The Seventh Circuit, in *Indianapolis Airport Auth. v. American Airlines, Inc.*, 733 F.2d 1262 (7th Cir.1984), held that fees "wholly disproportionate" to the costs of serving the airline and airline passengers were unreasonable. The plaintiffs have the burden of proving that the rates are unreasonable in light of the benefits conferred on them. *Evansville Airport v. Delta*

<sup>5</sup> The text of section 1513 reads, in pertinent part,

(a) No State . . . shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom; . . . .

(b) . . . [N]othing in this section shall prohibit a State . . . from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing in this section shall prohibit a State . . . owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

49 U.S.C.A. App. § 1513 (West Supp.1991).

*Airlines*, 405 U.S. 707, 92 S.Ct. 1349, 31 L.Ed.2d 620 (1972); *American Airlines, Inc. v. Massachusetts Port Auth.*, 560 F.2d 1036 (1st Cir.1977). Deference is given to the rates established by the state and administrative agencies as long as they act within a broad range of reasonableness. *Evansville*, 405 U.S. at 712-14, 92 S.Ct. at 1353-54.

#### A. Reasonableness of the Rates Charged to Concessions

The Airlines' argument suggests that overall the rates and fees established under the ordinance are inherently unreasonable because they result in a substantial profit for the Airport. The District Court found that the Airport had over \$9 million in reserves at the end of 1989. Concessions are all the non-aeronautical users: parking lot, car rentals, restaurants, motels, gift shops, advertising, and food services. The fees charged by the Airport to these concessions generate a surplus of \$2 million per year and result in a large reserve. The Airport views this surplus as a "contingency" fee to be used at a later time. The Airlines assert that this profit is prohibited by the AHTA and should properly be used to reduce the charges to the Airlines.

Non-airline concessions are not within the scope of the AHTA. As noted by the District Court, the statute does not mention concessions. Rather, section 1513(b) permits airports to charge reasonable fees and charges from *aircraft operators*. The Seventh Circuit opinion on which the Airlines rely for their assertions is distinguishable. In *Indianapolis Airport*, the court held that an ordinance was unreasonable which disregarded airport concession revenues when establishing the airline rates and fees. Such a result, wrote Judge Posner, is "wholly disproportionate to the costs to the airport of serving the airlines and their passengers, and is therefore unreasonable. . . ." 733 F.2d at 1268. Judge Posner relied on two factors in *Indianapolis Airport* which distinguish that case from the



one now before us. First, the Indianapolis airport serves in a monopoly environment. As judicially noticed by the District Court, Kent County Airport is located less than an hour and a half from two airports serviced by major airlines. This means that the passenger has some role in determining from which airport to travel. Second, the Seventh Circuit required the plaintiffs to prove that the rates imposed directly affected the airline or airline passengers and not other parties not parties to the case. As did the District Court, we find the reasoning articulated by the Colorado District Court in *City and County of Denver v. Continental Airlines, Inc.*, 712 F.Supp. 834 (D.Col.1989) persuasive:

Persons affected by the rates, rentals and charges for the restaurants, gift shops, parking lots and rental cars, include persons who are not air passengers. These accessory uses of the airport may be considered amenities for air passengers and convenient for them, but no person traveling to, from or through Stapleton on United or Continental flights is required to park in the parking lot, rent a car, eat at a restaurant or buy a magazine. Those are all individual decisions driven by individual perceptions of need and economic values. That is not the case with respect to the use of the airport's runways, taxiways, and airline portions of the terminal area. There, the air passenger is captive and her purse is necessarily and directly affected by Denver's charges to the airlines for those uses. Stated differently, Denver's decision to operate concessions at a profit is not an exploitation of airline passengers who have the freedom of choice to use the amenities Denver has provided.

712 F.Supp. at 838-39. We find that the AHTA does not apply to charges assessed to non-airline concessions and agree with the District Court that the Airlines may

not require the cross-credit of concession revenue surplus against their rates and fees.

#### B. Allocation of fair share costs to concessions

The Airlines were assessed nearly \$2 million in fees for 1988. This figure includes 76% of the costs of the passenger terminal building. The remaining 24% of the costs are allocated to concessions including restaurants, hotels, baggage carts and lockers.<sup>6</sup> The cost allocation is based on floor space occupancy. The Airport asserts that the cost allocation of common space is made in the same proportion as the percentage of terminal space the user occupies exclusively. The Airlines respond that the Airport's cost allocation is unreasonable in violation of AHTA. The Airlines contend that the 76% allocation results in the Airlines paying for 100% of the public spaces. Appellant's Brief at 29 n. 46.

A fee assessed is reasonable as long as it is based on some fair approximation of the cost of providing the facilities and services, is relevant to the operation of the airport, and is not arbitrary and capricious, but is based on a uniform, fair and practical standard. See *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines*, 405 U.S. 707, 712-14, 92 S.Ct. 1349, 1353-54, 31 L.Ed.2d 620 (1972), quoting *Hendrick v. Maryland*, 235 U.S. 610, 624, 35 S.Ct. 140, 143, 59 L.Ed. 385 (1915); *Massachusetts Port Auth.*, 560 F.2d at 1038. An assessment of costs for the common space need not depend on a district court's estimate of the benefits each renter derives from its customers' use of the common area. Although such a method would be a possible method for assessing costs, there is nothing in the Act that dictates that such a method *must* be used.

There is no support for the Airlines' assertion that they pay for 100% of the "public spaces" cost. The Airlines'

<sup>6</sup> Some of the concessions, such as telephones and advertising space, are allocated no costs at all.

expert, Richard Dompke, testified that while 100% of the baggage claim area costs are allocated to the Airlines, the costs of common areas surrounding the restaurant, cocktail lounge, gift shop, and game room, are assigned to all users of the terminal building "on an equitable basis." Dompke also testified that part of concourse A has been designated as a public area, and that for this area, 76% had been charged to the Airlines. R.E. No. 162, pp. 163, 164. The Airport's witness, John F. Brown, stated that the Airlines are not charged at all for the space that is roped off where passengers line up to get their ticket and check in their luggage. The lease signed by the parties indicates that an airline must pay a rental rate based on a square footage basis for the ticket wings, concourse level, holding rooms, lounges, and office space which it occupies. Rental of the baggage claim and tag circulation area is apportioned between the users of these areas. Because there is no support in the record that 100% of the costs associated with all common areas of the terminal building are charged to the Airlines, the Airlines have failed to show that the terminal facility fees assessed to them are unreasonable. We therefore affirm the District Court on this issue.

#### C. Allocation of fair share costs to General Aviation

The \$2 million in fees for which the Airlines are assessed also reflects airside costs for runways, taxiways, and passenger terminal aprons. The Airport allocates these airside costs to general aviation and the Airlines. General aviation, however, is only assessed 20% of its allocated costs. General aviation should be assessed its full allocation of airside costs. The deliberate decision not to assess general aviation its full cost allocation of airside service costs discriminates against the Airlines in favor of locally owned aircraft. The Seventh Circuit, in *Indianapolis Airport*, held in a similar situation,

The difference in the Authority's treatment of airlines and private planes—making the former pay for the

full costs (and more!) that they impose on the airport, but through inaction, allowing the latter to get away with paying little more than half of the costs they impose—has not been justified. And since flights by private planes are more likely to be intrastate than airline flights are, the effect of leaving the flowage fee unchanged has been to shift some of the costs imposed by local users of the airport to its interstate users, who are, along with many of their customers, non-residents of [the state where the airport is located]. This is just the sort of discrimination Congress wanted to prevent in the Anti-Head-Tax Act.

733 F.2d at 1271. The fact that concession revenues compensate for the underassessment does not justify the discrimination. The concession revenues could be used to purchase improvements or additional equipment that would potentially benefit both the concessions and the Airlines. All income from the airport must ultimately be used for airport maintenance or improvement or for a new facility. Thus, failing to assess general aviation for their total costs reduces the benefits which could accrue to the Airlines from the increased revenue.

#### D. Crash/Fire/Rescue Charges to General Aviation

The landing fees charged to the Airlines increased from 50 cents to 70.21 cents per 1,000 lbs. of aircraft weight in 1988. Approximately 50% of this increase was due to an increase in the costs of crash/fire/rescue ("CFR") services. Provision of these services was extended over the entire 24-hour period as opposed to the 18 hours of service previously provided. The Airlines pay 100% of the CFR costs. General aviation, while receiving these services, is allocated none of the cost. The Airlines contend that these services clearly benefit general aviation,



as well as terminal and parking lot tenants, and that the allocation of the CFR costs should reflect this benefit.<sup>7</sup>

Any airport, in order to receive certification, must maintain CFR facilities if the airport serves air carrier aircraft with more than 30 passenger seats.<sup>8</sup> 49 U.S.C.A. App. § 1432(a) (West Supp.1991). The defendants assert that since the Airport would not be required to maintain CFR facilities if only general aviation aircraft used the facilities, general aviation should not share the burden of paying for the services. This position fails to account for the fact that CFR facilities are provided and maintained and service general aviation. The CFR facilities answer and service non-airline calls and rescues. These services increase the cost of maintaining and providing CFR services. If the CFR only responded to commercial airline rescue calls, then the 100% allocation would be appropriate. Charging the Airlines for 100% of the cost of CFR services where general aviation and concessionaires, such as car rental companies, receive a substantial benefit is "unreasonable" under the terms of the AHTA. The fact that the CFR services are initially provided because of regulations requiring the services for commercial airlines does not validate allocating the costs of such services only to those airlines when the service provided is adequate to cover all aircraft which use the Airport.

<sup>7</sup> In fact, one witness testified that most of the CFR runs did not involve air carrier aircraft. Deposition of Robert M. Ross.

<sup>8</sup> Air carriers aircraft includes only those aircraft which are engaged in

the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce . . . .

49 U.S.C.A. App. § 1301(24) (West Supp.1991). See also 14 C.F.R. § 139.3 (defining "air carrier aircraft"); 49 U.S.C.A. App. § 1301(3) (West 1976) (defining "air carrier"); 49 U.S.C.A. App. § 1301(10) (West 1976) (defining "air transportation").

#### E. Amortization of Carrying Charges

The Airport allocated to the Airlines "carrying charges" or amortization fees for assets acquired. The defendants assumed when calculating the carrying charges that the capital assets were acquired with a nonexistent 25 or 30 year mortgage. Such a mortgage results in interest charges in addition to the historical cost. The Airlines argue that such a charge results in the Airport recovering 2½ times the initial cost. The defendants claim that such a charge provides the Airport a reasonable return on its investment and is similar in scope to the interest charged by a financing institution. The interest rate adopted for the carrying charge is 8% and it is applied to useful life of the assets. This rate is reasonable and should not result in a net present value which exceeds the initial cost of the project.

#### IV.

The Airlines urge that we find any claims which are not unreasonable under the AHTA unreasonable under the laws of the State of Michigan. Since we have found that the defendants failed to allocate the proper costs to general aviation, we address only the issue of surplus revenue from concessions under Michigan law. Michigan law provides, in regard to the fees charged by the operator of a public airport,

[The] terms, charges, rentals, and fees shall be equal and uniform for the same type of facilities provided, services rendered, or privileges granted with no discrimination between users of the same class of like facilities provided, services rendered, or privileges granted; however, the public shall not be deprived of its rightful, equal and uniform use thereof. Terms, charges, rentals and fees may vary where necessary to provide security and funds for payment of bonds to be issued as authorized for payment of bonds to be improvements to any airport, or to allow for

other differing costs of financing, construction of facilities, or maintenance and operation of the facility.

Mich.Stat. Ann. § 10.233(e) [M.C.L.A. § 259.133(e)] (Callaghan 1981). The Airlines argue that because the fees generated by the concessions generate more than is "necessary" to cover airport costs, they are contrary to state law. The Airlines cite no foundation, either in the language of the statute or in case law, which supports their position. Nothing in the statute suggests that generating revenue through charges to concessions is against Michigan law. Rather, the statute addresses nondiscrimination among similar users and considerations which may be made when setting rates. We find that the Airlines' claims that the Airport's surplus revenue is generated in violation of Michigan law to be without merit.

## V.

The Airlines also submit that the Airport's fees violate the Commerce Clause because of the burden they place on interstate travel. The Supreme Court in *Evansville* established three tests to determine whether the Commerce Clause had been violated: whether fees discriminate between interstate and intrastate users, whether they approximate each user's receipt of beneficial services, and whether they are excessive in relation to the Airport's actual costs. 405 U.S. at 707, 92 S.Ct. at 1349. The Airport claims that the status of the factual record does not support this claim and that in any event the Commerce Clause is not legally applicable. We find that the District Court, relying on *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 102 S.Ct. 894, 71 L.Ed.2d 21 (1982), properly dismissed the Commerce Clause contention in its January 19, 1990 decision.

The Supreme Court, in *Merrion*, held that courts should only undertake a Commerce Clause review of a tax or regu-

lation if Congress had taken no other action to regulate the area. Here, Congress has established clear guidelines for the fees and rates that may be charged commercial airlines and other public airport users. As the District Court found, where the issue before the court is the reasonableness of the fees under AHTA, the court should only look at the consistency between the fees and Congressional policy. Thus, the District Court's dismissal of the Airlines' Commerce Clause claim was correct. The Airlines contend that the District Court's decision to dismiss the Commerce Clause claim ignores a recent Eleventh Circuit opinion, *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth.*, 906 F.2d 516 (11th Cir.1990), *cert. denied*, — U.S. —, 111 S.Ct. 1073, 112 L.Ed.2d 1179 (1991). This case however involves a different type of dispute. In *Alamo*, an off-airport rental car company protested the imposition of a user fee of 10% of all gross receipts from the rental of cars to passengers picked up at the airport. The AHTA clearly does not cover off-airport rental car companies. Thus, *Alamo* was not disputing a tax or regulation in an area where Congress had acted and was therefore not barred by *Merrion* from suing under the Commerce Clause.

## VI.

According'y, the decision of the District Court is REVERSED and REMANDED in order that the costs associated with CFR services may be properly allocated between the Airlines and general aviation. With regard to the Airlines' claim that the concessions are under-assessed for their associated costs and that the Airlines are entitled to be cross-credited for surplus revenue generated by concession fees, the decision of the District Court is AFFIRMED. The majority of the court also confirms the decision of the District Court with regard to the method used to assess airside operation fees.



CONTIE, Senior Circuit Judge.

I concur in Judge Kennedy's opinion, except for Part III(C), allocation of fair share costs to General Aviation. On this issue, I write for the majority as Judge Nelson and I agree that the method the Airport used to assess airside operation fees for General Aviation and the Airlines was a reasonable method within the meaning of the Act.

In regard to the allocation of other costs, I agree with Judge Kennedy that the allocation of terminal rental costs between the Airlines and the concessions was reasonable, because 100% of these costs was not charged to the Airlines. In regard to crash, fire and rescue charges, I agree with Judge Kennedy that it is unreasonable to allocate 100% of these costs to the Airlines and that a remand to the district court is necessary to determine a proper allocation. Judge Nelson dissents from this position.

I will now deliver the opinion of the court with respect to Part III(C), allocation of fair share costs to General Aviation.

The Airlines argue that the Anti-Head Tax Act, 49 U.S.C. App. § 1513(a), has been violated because the Airport unreasonably charges the Airlines 100% of their airside operations costs for their use of the Airport's runways, taxiways, hangars, and passenger terminal apron, but charges General Aviation (corporate and private aircraft) only 20% of the airside operation costs, which it incurs. The Airlines argue that the Act requires that General Aviation be charged the full amount of its airside operation costs.

I do not agree. Since the shortfall in the costs incurred by General Aviation does not come out of the Airlines' pocket, but is made up instead out of concession revenues, this court has no authority to order that General Aviation must be charged 100% of its airside operation costs. The plain language of § 1513(a) of the Act ap-

plies only to persons traveling in "air commerce." The statute thus does not give the federal courts the authority to dictate how an airport should manage its business in regard to corporate and private aircraft or concessions, but indicates that a court may interfere only in regard to the reasonableness of the rates charged to commercial airlines. It is not unreasonable for the Airport to charge the Airlines 100% of their airside operation costs and General Aviation only 20% of its airside operation costs as long as the Airlines are not required to pay for the 80% "loss" the Airport incurs in regard to General Aviation.

In the present case, General Aviation is charged a four-cent-per-gallon fuel flowage fee and a landing fee which raises less than 20% of the landing area costs created by General Aviation. The shortfall incurred by General Aviation is made up out of the surplus revenues generated by the fees paid by the concessions. The Anti-Head Tax Act is limited in scope to the reasonableness of the rates charged to commercial aircraft operators and does not concern the revenues derived from concessions. Therefore, a federal court does not have the authority to state that instead of using concession revenues to make up the shortfall, General Aviation must be charged 100% of its airside operation costs. A discrepancy in a fee vis-a-vis different types of air carriers based on an operational cost is unrelated to the Anti-Head Tax Act's prohibition against charges on "persons traveling in air commerce." *New England Legal Foundation v. Massachusetts Port Authority*, 883 F.2d 157, 170 (1st Cir.1989). Moreover, even if General Aviation were charged 100% of its airside operation costs, the Airport reasonably could continue to charge the Airlines 100% of their airside operation costs. Thus, the demand which the Airlines make would not necessarily bring them any relief.

To reiterate, the Anti-Head Tax Act authorizes the federal courts to intervene in the setting of airport rates and charges only in the limited circumstance where the

rates charged to commercial airlines are unreasonable. The decision of the Airport in the present case to charge the Airlines 100% of their airside operation costs, but to charge General Aviation only 20% of its airside operation costs, does not result in discriminatory treatment against the Airlines, because the shortfall from General Aviation is not paid for by the Airlines but is made up out of the surplus concession revenues. This Court is in agreement that the Airlines are not entitled to a cross-credit of concession revenues. Therefore, the Airlines do not have standing to challenge what is done with the concession revenues in regard to General Aviation. The Airlines do not contend that the fees charged them for their airside operations costs are arbitrary or capricious and concede that the fees are based on the actual break-even costs calculated on the basis of aircraft weight and number of landings. Because the fees charged to the Airlines for their airside operations have a reasonable relationship to the actual costs incurred, they are reasonable within the meaning of the Anti-Head Tax Act. The decision of the district court that the method the Airport used to assess airside operations fees was a reasonable method is hereby **AFFIRMED**.

DAVID A. NELSON, Circuit Judge, concurring in part and dissenting in part.

I would affirm the judgment of the district court in its entirety. I agree with what Judge Contie has written with respect to the issues addressed in Part III(C) of Judge Kennedy's lead opinion (allocation of fair share costs to concessions and general aviation), but I am not persuaded that the airport acted unreasonably in its treatment of the cost of crash/fire/rescue services. Accordingly, I dissent from Section III(D) of the lead opinion and from the portion of the judgment that orders a remand.

In joining Judge Kennedy's opinion on the allocation of costs between the airlines and other users, I wish to

add a few words on the treatment of the public spaces in the passenger terminal building. Under 49 U.S.C. App. § 1513(b), the airport is allowed to levy and collect "reasonable" rental charges from aircraft operators. The airport has considerable leeway in determining what is reasonable, and even if the record showed that 100 percent of the amortization and operation and maintenance cost of the public spaces in the terminal was being allocated to the airlines, I would be reluctant to conclude that such an allocation was unreasonable.

It would not be unreasonable, I think, to view airline traffic as the *raison d'être* of the terminal. Professor Ferdinand Levy, a highly qualified economist, testified that "you could cut out all the concessions [through the use of satellite parking and so forth] and you could still have the airport and the airlines." (Trial transcript, pp. 993-94). And if the fundamental purpose of the terminal is to serve the airlines and their customers, it would not be unreasonable to assign to the airlines the full break-even cost of the terminal's public spaces.

The same logic informs the district court's discussion of the assignment to the airlines of the cost of crash/fire/rescue ("CFR") services:

"Plaintiffs argue that they should not be charged 100% of CFR expenses. This Court agrees with the *Indianapolis* court that such costs are properly allocable 100% to the airlines. 733 F.2d at 1271. The CFR costs are incurred solely because of the presence of plaintiffs and other commercial airlines at the Airport. If all the concessionaires, general aviation and fixed base operators terminated their tenancies with the Airport, the Airport would still be required to provide CFR. If all the commercial airlines ceased service at the Airport, the Airport would no longer be required to provide CFR. In addition, at trial Dean Nitz, an FAA agent, testified that it was appropriate to charge all CFR costs to the commercial



airlines. Therefore, the Court finds that a charge of 100% of CFR to plaintiffs does not violate the AHTA." *Northwest Airlines, Inc. v. County of Kent, Michigan*, 738 F.Supp. 1112, 1119 (W.D.Mich. 1990).

I agree with this analysis.

The airport's method of allocating CFR costs is not the only acceptable method, to be sure, just as its method of allocating terminal space costs is not the only acceptable method. Economists and cost accountants recognize a wide variety of different methods for assigning costs within a business that offers multiple services to multiple customers. In the absence of a statutory cost allocation formula, however, the courts have no warrant to require the use of one acceptable method in preference to another. *Colorado Interstate Gas Co. v. Federal Power Commission*, 324 U.S. 581, 589, 65 S.Ct. 829, 833, 89 L.Ed. 1206 (1945). Justice Douglas, who spoke for the Court in *Colorado Interstate Gas*, explained that

"where as here several classes of services have a common use of the same property difficulties of separation are obvious. Allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science." *Id.* (Citation omitted.)

*Cf. National Association of Greeting Card Publishers v. United States Postal Service*, 462 U.S. 810, 825, 103 S.Ct. 2717, 2727, 77 L.Ed.2d 195 (1983), a unanimous opinion where the last three sentences of this passage were quoted with obvious approval.

Rate-making, including the cost-allocation component of rate-making, "is essentially a legislative function." *Colorado Interstate Gas*, 324 U.S. at 589, 65 S.Ct. at 833, citing *Munn v. Illinois*, 94 U.S. 113, 24 L.Ed. 77 (1876). Where, as here, a challenged rate structure rests on essentially legislative judgments that meet the applicable statutory test, it is not appropriate for the courts to substitute their judgment for the judgment of the rate-makers.

## DEFENDANTS' INTERROGATORY NO. 10

**INTERROGATORY NO. 10:** State whether any Plaintiff makes any contention in this case that the operation of any aspect of the Kent County International Airport and/or any fees, rates, or charges in issue in this case constitute any type of illegal monopoly or other violation of any applicable state or federal anti-trust law, and, if the answer to this Interrogatory is in the affirmative,

- (a) Describe in detail each and every fact that in any way relates to and/or supports the allegations or contentions set forth in the response to this Interrogatory including, but not limited to the following facts:
  - (i) The persons participating in any and all alleged monopolistic practices, actions, or conduct;
  - (ii) The precise geographic area in which it is claimed that the conduct described in Paragraph (i) above took place;
  - (iii) The precise period of time when it is claimed that the conduct described in Paragraph (i) above took place;
  - (iv) Identify and describe each service of The Kent County Aeronautics Board, and the pricing therefor, that each Plaintiff claims constituted any type of illegal monopolistic practice or other violation of any state or federal anti-trust law; and
  - (v) Specify any alleged [sic] The Kent County Aeronautics Board refusal to contract, negotiate, provide services, or other conduct that any Plaintiff claims constituted any illegal monopolistic practice or violation of any state or federal anti-trust law.
- (b) Specifically identify each and every state and/or federal anti-trust statute, by section or subsection,



that Plaintiff contends was violated by virtue of the facts recited in Paragraph (a) above;

- (c) Identify every person (including every potential expert witness) who has any knowledge of any of the facts set forth in Plaintiffs' response to Paragraph (a) above, and specify which facts are known by each said person so identified;
- (d) Identify each and every document that in any way relates to and/or supports any of the facts set forth in Plaintiffs' response to Paragraph (a) above, and state whether Plaintiffs will voluntarily produce said documents.

[Each of the Plaintiff Airlines responded to this Interrogatory with the following identical answer:]

**ANSWER TO INTERROGATORY NO. 10:** The Plaintiff does not now contend that there is an illegal monopoly or other violation of the applicable state or federal Anti-Trust Laws because of any activity of any of the Defendants at the Airport. If the Plaintiff discovers any such illegal monopoly during discovery, the Defendants will be so advised. The natural monopoly nature of the Airport does give the opportunity to the Defendants to obtain greater charges from airline passengers for certain services, such as parking, than the Defendants would obtain in the absence of this monopoly.

#### **PLAINTIFFS' PROPOSED FINDING OF FACT NO. 24**

24. The cost of producing the passenger flow cannot be directly calculated. However, it is obvious that any appropriate methodology used to divide costs between the users in the terminal building must take such matter into account. If the rentable square footage is divided into the total costs allocated to the terminal, there will be an over-allocation of costs in the terminal building to the Airlines because the Airlines are assigned most of the terminal space, while the concessions receive benefits unrelated to the amount of space they directly occupy.

## DEPOSITION TESTIMONY OF JOHN SORENSON

\* \* \* \*

[67] Q And United continued to operate at the airport as it had before, did it not?

A United continued to operate at the airport.

Q And so far as you know, did it continue to operate at the airport at a profit, as it had before at Kent County?

A I'm not aware of whether United was operating at a profit or a loss. That really is outside of the scope of our responsibility.

Q Who at United in the chain of people looking at execution of leases makes the judgment that you shouldn't execute a lease because the airport charges will all of a sudden cause the airport to show a loss, rather than a profit?

A The decision as to whether to execute the lease is made [68] ultimately by the person who has to execute it, based on the advice that he may be given from the various organizations involved.

Q I take it that United at any time, if it felt that increased airport charges would cause United all of a sudden to operate at a loss or at a reduced profit from the previous year, could assemble and provide such information to the airport in the negotiation process, could it not?

A Could it choose to give such information to an airport?

Q Yes.

A Well, generally, we do not discuss profitability with outside organizations, and in fact, generally, in our department, we are not aware of whether a particular airport or a particular market segment is profitable or not, and that really is not a decision that we make because we—it's not information we're given because that's not the basis upon which we execute a lease or not.

Q Can I assume that there must be somebody in the chain of command who looks at airport leases who is responsible for making that judgment either at a particular airport or at a group of airports?

A From time to time—well, I don't know. I don't know. United makes decisions to start service and suspend [69] service at airports from time to time. The basis of those decisions, I don't know what the basis is.

\* \* \* \*

[124] Q (By Mr. Hunting) Am I correct in assuming, sir, that, generally, United Airlines would approach its flying in and out of any commercial airport, excluding government, Federal government airports, with a view that it hopes to make a profit by virtue of its operations in flying in and out of that airport?

A I would hope so.

\* \* \* \*

[148] Q Are you aware of any residual methodology lease that United Airlines has with any airport that does not contain some type of MII clause?

A I can't think of one.

Q Would you tell me what your understanding of an MII clause is?

A Well, MII stands for majority in interest, which is usually defined in each airport agreement in which such a provision exists, which defines, in essence, what majority of an airline community will constitute a recognized majority for the purpose of some kind of a vote, and it can be used in several contexts. Probably the most common is for airline approval or disapproval of proposed capital investments on the part of the airport.

Q And where there is an MII clause in a lease of a residual methodology nature between an airline and an airport, it gives at least some measure of control or veto power to [149] the airlines over what the airport can do by way of spending money; am I correct?

A Yes. The purpose of it is to—in the case where the airlines and airport have negotiated a residual cost agreement, it is the protection to the airlines that the airport will not proceed with what the airlines might believe are unreasonable investments. Veto power, I think, is an overstatement of how, in practice, that works.

Q But an accurate statement as to how it could work in theory, correct?

A It's a mechanism by which the airlines could object and delay or defer or disapprove a proposed capital improvement.

Q Or perhaps prevent?

A It in some cases could prevent.

\* \* \* \*

# DEPOSITION TESTIMONY OF MARK W. FISHER

\* \* \* \*

[7] Q Can I assume that most likely that was a profit motivated decision by somebody?

A I don't know whether it was a profit motivated decision. It was a marketing—more of a marketing related decision than anything else.

Q And apparently Fischer Brothers stayed at the airport until the end of 1986, and then, as I understand it, it was Fischer Brothers that left at the end of 1986?

A It—somewhere in that time frame, that's correct.

Q When Fischer Brothers left in 1986, was there any forfeiture or penalty payment made by Fischer Brothers to the airport?

A No, there was not. To my knowledge, there was not.

Q During the period of time that Fischer Brothers was at the airport in 1986, did it make any investments in the airport, other than perhaps improvements to physical facilities that were being rented?

A We were not renting any facilities from the airport.

Q Were you renting them from Northwest?

A No, we were not.

Q So, your only payments would have been landing fees?

A That's correct.

\* \* \* \*

[21] Q Did your business school training involve or include any management cost accounting courses?

A Yes, it did.

Q Do you remember anything about a doctrine of interdependencies in any of those courses?

A I don't recall any, no.

Q Have you ever seen a lease as to which Midway Airlines or any of its subsidiaries or predecessors were a signatory party where the lease contained either reference to the word interdependencies or definition of the word interdependencies?

A There are—there certainly may have been some, but I do not recall. Going through many leases, I'm sure that there's a possibility it was in a lease or two, but I do not recall any.

Q Would you recall what airports those might be, if in fact [22] there was such a reference?

A No, I would not be able to recall that.

Q Have you ever seen a lease for Midway, any of its predecessors or subsidiaries that attempts to define how the doctrine of interdependencies might work as it relates to charges an airport makes to airlines?

A I have seen none.

\* \* \* \*

[30] Q Are you familiar with how general aviation charges and fees are handled at other airports where Midway Commuter operates?

A No, I am not.

Q Have you ever heard of any lease where Midway Commuter has been a party that reduced the commercial airline landing fee charges in the event general aviation users didn't pay what was considered to be their allocated share of landing fee costs?

A I do not recall any, no.

\* \* \* \*

[36] Q Has your company ever engaged in any study to determine what it incurs by way of expenses to develop



any flow of passengers that occur at any airport where your company operates?

A I am not aware of any.

Q Have you ever seen any such study by any entity, whether it be an airport, an airline, a government, an expert?

A No, I have not.

\* \* \* \*

[40] Q And if the airport wished to spend a lot of money against the advice of the airlines, and there was an MII clause, then the airlines would have the right to assert whatever privileges are contained in their MII clause?

A Yes.

Q And those privileges, as I understand them, could include vetoing a project, delaying a project or perhaps insisting that the cost of the project not impact rates that the airlines are charged?

A That's correct.

\* \* \* \*

Q Do you get involved in any of the procedures by which the [41] FAA may give tentative or final approval for major airport projects?

A I don't get involved in them. We are made aware of them, but I don't get actively involved.

Q And I take it you at least understand from your experience that one of the reasons you're made aware of such things is so that you can voice opinions on such things?

A Correct.

Q Because many of those kinds of projects, to the extent it's not Federal money or state money, could impact costs and thereby impact charges from an airport to airlines?

A Yes, that's correct.

Q Have you at any time studied any aspect of the future projects under consideration by the Kent County International Airport at this time?

A No, I have not.

\* \* \* \*

[62] Q Do I assume then that the people who make the decision as to the types of planes and the number of planes to bring into an airport have probably already determined that they can make money?

A I don't know if they're determined that they can make money. In our case, with Midway Commuter, our main purpose is to provide passengers to our parent company at the hub, being Chicago Midway Airport. So, the amount of revenue or the cost of doing business at a city like or an airport like Kent County is not necessary—necessarily important or as important as to the number of bodies that we can bring to Chicago and put on our parent company's airplane.

Q But for the larger airlines coming into Grand Rapids, that would be a much more important consideration, would it not?

A I can't answer that. I'm not one of them.

Q Would you expect that it would be?

A I would expect it would, yes.

[63] Q And for your parent company, operating at larger airports, it would be an important consideration?

A Yes, it would.

Q And since the advent of deregulation, if for business reasons or otherwise a company wants to withdraw from an airport, it can do so?

A That's correct.

Q And the companies you have been affiliated with in fact have done that and come back to Kent County International Airport?

A Under two different ownerships, yes.

\* \* \* \*

## DEPOSITION TESTIMONY OF JEROME J. BARNACK

\* \* \* \*

[16] Q And I take it you realize that the reason that all of us are here today is because the airport and the airlines can't agree on how they would deal with a doctrine of interdependencies, as that doctrine might impact and relate to airport charges to airlines?

A I understood we were here today because the airlines and the county have not been able to agree on the appropriateness of the charges.

Q And—

A Without regard as to any esoteric doctrine.

[17] Q And by esoteric doctrine, you mean the doctrine of interdependencies, sir?

A As you've been referring to it, sir.

\* \* \* \*

[35] Q Are you aware of any residual methodology lease of any type, be it a blend or pure, that does not contain an MII clause?

A By MII, are you referring to what's called the majority in interest—

Q Yes.

A —clause? I don't recall of any, but that clause does take on various connotations.

Q And am I correct that among all of the connotations of an MII clause, there is always some feature that provides either a voice or some element of control to the airlines regarding substantial amounts of money that an airport might want to spend?

A Only to the extent that they, they being the airport [36] operator, would be able to charge those costs back to the airlines in the rate base. I'm not aware of any that flat out prohibit—I take that back. I recall one—only one—no, I don't recall any that flat out prohibit the airport from doing certain things that they need to do.

Q And by flat out prohibit, you mean sort of a legal prohibition, as opposed to a practical prohibition?

A Contractual prohibition from the airport operator being able to operate his airport.

Q Correct. Okay. Let's go on.

A There are—the conventional MII has provisions that allow the airport to do what they need to do to remain—keep the airport certifiable, if you would, by the Feds.

Q And certifiable by the Feds includes providing the appropriate amount of crash, fire, rescue personnel and equipment, does it not?

A It may.

Q It does, does it not? Isn't that part of the certification process?

A Depending on levels of service and types of equipment, and all that sort of enters the parameters of it.

Q It certainly applies to the planes your airlines have flown, does it not, in terms of the seating capacity of the planes?

[37] A There are significant amounts of small airports that do not have crash, fire, rescue on the field, and it's not a flat out—to the best of my knowledge, I'm not familiar with certification proceedings, but there are different levels of service that require different levels of crash, fire, rescue.

Q Okay. Let's try to get a few terms correct here. Am I correct that single cash register, as you used the phrase, would be equivalent to pure residual methodology?

A. No. Single cash register, in my terminology, as I used it, means take all the revenues and you take all the expenses, just one bag.

Q Now, with an MII clause, if an airport wishes to undertake a substantial project that the airlines do not want, and for which there may not be complete Federal moneys, then the airport would have to have its own money to go ahead with the project if the airport felt the project was still that important?

A It's difficult to discuss MII provisions without having specific language because they take on so many different aspects.



Q And I take it, sir, that whatever kind of MII clause might exist in a lease, you could expect that it would produce discussions and negotiations between the airlines and the airport as to whether airport projects should go [38] forward or should not go forward as far as the airlines were concerned under an MII clause?

A Certainly.

Q And you've certainly attended meetings, I take it, where the airlines have essentially said, we have an MII clause, and we'd like to have some input on what you're trying to do, and so, you've sat down, and you've had meetings and discussions because the airlines have voiced some concern under the MII clause?

A I have also been at meetings where that we have expressed concern and have had input in projects at airports where MII clauses are not existent.

Q So, it's been both ways?

A Yes.

Q And you have the right to do it both ways?

A As far as I know.

Q And to the extent that you don't have an MII clause, you still have the right to voice concerns in the context of airport board public meetings or in the context of public meetings on Federal projects or in the context of public meetings on master plans?

A As far as I'm aware of, yes.

Q Is it fair to say that there are all kinds of modifications of airport rate making methodologies?

A That's fair.

\* \* \* \*

[93] Q Am I correct that you would assume that airlines choosing to commence operation at an airport most likely expect to show a profit at that airport either immediately or within the term of the lease or some foreseeable future period of time?

A I would come to that same assumption, yes. Probably incorrectly, but let's hope so.

\* \* \* \*

[97] Q Are you aware, based upon any of your work at any time for any airline, of any study performed by anyone that attempted to isolate or segregate the cost to any airline of producing a flow of passengers at any airport?

[98] A I don't know.

Q I take it you've never seen such, that you can recall today, correct?

A Well, I'm not quite exactly certain what you mean by the study. If you're talking a roll-up or all of the costs of operating at a particular airport, I'm certain that must have been done. I haven't seen such a study. I'm not quite sure what you mean by the question.

Q Okay. What I'm talking about is this: The airlines appear in this case to contend that because they have produced a fellow of passengers in, on and around an airport, they should be entitled to directly or indirectly some amount of the revenue that those passengers generate at the airport by purchasing nonaeronautical products and services. Are you with me so far?

A The quotation marks around entitled and—yeah, go ahead.

Q Now, we can always figure out by looking at what an airline pays an airport in the way of landing fees, terminal rental rates and other charges what these costs to an airline are, correct?

A By doing extensions of those, yes.

Q Or by looking at actual payments?

A Yes.

[99] Q Now, are you aware of any study of any other additional types and amounts of costs that airlines believe they incur other than landing fees, terminal rental rates, overnight aircraft parking fees, in relationship to the production of a flow of passengers at an airport?

A I'm not aware of such a study, but they—I have to gather that surely somebody is doing them. I don't know how else one would determine—I don't know what you'd make—an airline would make to determine whether they remain or walk away from a marketplace.



Q But you've never seen—

A I don't know.

Q You've never seen such a study; am I correct?

A No, I have never seen such a study.

\* \* \* \*

#### DEPOSITION TESTIMONY OF PAUL HEGEDUS

\* \* \* \*

[19] Q Well, the methodologies would be embodied in many pages of documents at each airport, would they not?

A It depends on how the lease is written. Some leases contain the specific methodology. Others—others may show the methodology in the way the numbers are distributed on the spread sheet and not specifically have text to go along with it.

Q Have you ever seen a lease of any type that had in it and explained interdependencies methodology?

A None that specifically used that word.

\* \* \* \*

#### DEPOSITION TESTIMONY OF ROBERT M. ROSS

\* \* \* \*

[88] Q Now, the revenue bond issue was repaid not by taxes but by revenue from the Airport; isn't that correct?

A It is not paid off yet.

Q It has been paid down, to the extent it's been paid down, however, by revenue from the Airport; is that correct?

A That's right.

Q Now, isn't it true then that the items now being depreciated and upon which a return on investment is being charged include items that were purchased from the original bond issue and also items that were purchased from the Airport operating revenues either through revenue bonds or through expenditure of reserves; is that correct?

A Yes.

Q Has the Airport kept track of the extent to which particular items on which a return on investment and depreciation is being charged were funded from tax obligations or from charges paid by the users of the Airport?

A That could be determined. I don't think we've been doing that specifically, but we could—by checking the books, that determination would be made.

\* \* \* \*

[93] Q With respect to the crash fire rescue, isn't it true that the original Buckley studies apportioned that as [94] the cost of the landing area in general were apportioned.

A When the first Buckley—the study was made, we had no expense of that sort.

Q There was no fire department here; is that correct?

A We had a volunteer fire department.

Q How was its cost apportioned?

A It was minimal actually. It was like the local volunteer firemen you'd find in a small area. It was a social group in many ways. They ran the Christmas party; they did everything of that sort. And we paid them—we had the—our own personnel volunteered outright.

The airline people would also volunteer. And when we had an alert, particularly of their own airline, they would go immediately to the maintenance building where we had two pieces of surplus fire fighting equipment, World War II vintage.

Q How were the costs for that operation apportioned in the original Buckley report?

A I don't know. It was just minimal. It really had no effect on our overall operation.

Q At some point did the Board start apportioning all the cost of fire fighting at the Airport to the Airlines?

A Yes, we did.

[95] Q When was that?

A I don't recall. I'm trying to think of when the regulation came into effect. Was it 1971 or '73? That was FAR 139. I believe it was '73.

Q What does the fire equipment consist of at this time at the Airport?

A Well, we are under that regulation. We are under what we call an index C, and we must have a certain amount of vehicles able to carry a certain amount of water and chemical mix. And I think we're up to 3,500 gallons now. And we have the vehicles to take care of that particular requirement. We operate three vehicles.

We've also acquired a nursing truck from the City of Grand Rapids Fire Department, and we've also acquired another tanker which we use for our fire training. We put fuel in it for our live fires that we train our men with.

So basically we have three pieces of equipment that meets the index C requirement of the FAA, which is the gallonage and the chemicals.

Q And those are two pumpers and a nurse truck?

A No, two pumpers, and then we have what we call a quick-response vehicle, because we have to be out on the runway in three, three and a half and four minutes with those three vehicles.

[96] Q So you have a quick-response vehicle and two pumpers. Do you have any other fire or rescue-type vehicles?

A Yeah, we do. We have some—we just bought a new vehicle. The FAA has allowed us to keep one of the old ones which we were going to turn in, and they recommended we keep it, and we have that as well.

Q Do you have any other fire—

A But to meet the index, we have three basic vehicles.

Q Do you have any other fire or medical emergency response vehicles?

A We have a police vehicle, which is equipment with medical equipment, and all of our police are EMTs and all of our firemen are EMTs.

Q Now, what equipment responds to fires in the terminal building or the parking lot?

A Everything we have.

Q What responds to fires in the Amway and Steelcase hangers?

A All of the equipment we have.

Q Am I correct—

A If necessary.

Q Am I correct that Amway and Steelcase have their home-base hangars here in which they store and repair [97] their jet aircraft?

A That's correct.

Q Are there extensive General Aviation hangars here, also?

A Yes.

Q Who responds to fires in the General Aviation hangars?

A Our CFR group. We are supplemented by Cascade Township and we are supplemented under contract with the City of Grand Rapids Fire Department.

Q And the same way, I assume, for fire in the parking lot?

A Yes.

Q You send whatever vehicles are needed from your fire operation; is that correct?

A Yes.

Q In the last year, how many runs did your fire department have that involved air carrier aircraft?

A I'd have to check the records.

Q Do you know if it was more than ten?

A I think it was more than ten, yes.

Q Was it more than, say, 25?

A It probably—that sounds like a figure that would be reasonable.

Q What would your total number of runs, that is, [98] actual dispatching of fire equipment be at the Airport in a year? Would it be 200 or—

A Could be. We can check those figures. We have the records on that.

Q I take it it's fair to say that the vast majority of runs do not involve air carrier aircraft; is that correct?

A You are right.



[120] Q So in other words, there is a percentage allocation which Buckley developed from a formula which your staff applies the same percentage today; is that correct?

A That's correct.

Q Now, do you know what his formula was?

A No, I don't.

Q Have you done anything to test the validity of the percentages currently?

A No, we have no reason to.

Q So you are today assuming that Buckley's original formula was correct, although it apparently died with him, unfortunately, and you are simply applying the result of that formula; is that correct?

[121] A That's right.

\* \* \* \*

[221] Q In the rate study which is Exhibit 6, income from wall advertising is deducted from the cost of the terminal before that cost is allocated to the various users; am I correct?

A Yes.

Q Who made the determination to start deducting the wall advertising income?

A Mr. Buckley.

Q When was that?

A In the rate study of—I forget the last time—'67 I believe it was.

Q Did he tell you why he was making that adjustment?

A Yes, it was a concession activity.

Q Other than because it was a concession activity, [222] did he state any other reasons?

A I can't recall.

\* \* \* \*

[238] Q Now, let's suppose that some funds are generated from parking lot revenues and then are later used to purchase a capital improvement in the landing area. Can you make that assumption?

A Yes.

Q Is that what your system is designed to do in fact?

A Yes.

Q Now, the item that has been purchased from the [239] parking lot revenue in the landing area, will that then be depreciated and charged out to the users of the landing area, including the airlines?

A Yes, on a break-even return.

\* \* \* \*

[240] Q So then isn't it true that if funds from parking lot operations are used to purchase assets in the landing area, in addition to depreciating those assets and charging them to the landing area users, you will also charge a return on investment or interest charge to the landing area users?

A Well, those reserves for capital improvement could go into the landing area or anyplace else, yes. They are really developing new assets, physical assets. And yes, they would be charged an interest rate because, again, we could keep those funds—the county could keep those funds and get a return, interest return on them if we didn't use it for further development of the airfield.

\* \* \* \*

#### DEPOSITION TESTIMONY OF HAROLD PEDERSON

\* \* \* \*

[169] Q You were asked a number of questions about federal monies. Is it your understanding that the federal [170] monies were subtracted or backed out of the cost studies in an effort to determine what it was that the airport itself paid for the items that went into the cost areas?

A That's correct, there was credit given for all federal and state aid.

Q And over the years the predominant amount of aid has come from the federal government rather than the state government, as you understand it?

A That's correct.

Q Based upon your understanding of the Buckley formula that you have worked on, if you were to assume

that in a particular year that the revenue from general aviation ended up somewhat below the projected costs for general aviation, is that difference charged to the airline plaintiffs in this case?

A. No, it's not.

\* \* \* \*

# DEPOSITION TESTIMONY OF SANDRA DONCAL

\* \* \* \*

[105] Q. Isn't it true that the carrying charge used in the Buckley method exceeds the depreciation on those items to which the carrying charge applies?

A. Time value of money at depreciation.

Q. Yes, it exceeds the depreciation; doesn't it?

A. Yes.

Q. Isn't it true, then, that there is a charge built into the Buckley system which is greater than the operation and maintenance cost, plus the cost of administration, plus depreciation?

A. It's in time value of money, that's a cost.

Q. You say the time value of money is a cost. By that do you mean that it is a cost to the Department—strike that question. You are saying the time value of money is a cost. Do you mean that the Department incurs a cost equal to the amount it could have received on its investment in the airport had it not invested in the airport and simply put the money in the bank?

A. Yes, except that that is less. That is the floor. Some years, you know, the interest was 21 percent.

Q. Certainly. So in some years they would have had even more money had they invested in—

A. But we didn't use that. We always—the lowest.

Q. So you used the lowest bank rate; is that correct?

[106] A. Yes.

\* \* \* \*

[111] In Exhibit 6, is there any attempt made by the Buckley methodology to avoid charging airfield users for airfield improvements paid for by profits or income from non-airfield cost centers?

[112] A. Exhibit 6 is the Buckley study?

Q. Yes.

A. There are no revenues considered in it.

Q. So—

MR. MALLETTE: Well, would you read back the question.

(Reporter read back the requested portions of the record.)

A. There are no revenues considered in this study.

Q. (By Mr. Mallette) Then I take it your answer is, "No"?

A. That's right. There is just cost.

\* \* \* \*

[143] [Q.] Directing your attention first to Exhibit 17 of this deposition, and in particular to Page 6 of Exhibit 17, you indicated, I believe, that you participated in most of the collection of data reflected in the middle of Page 6 of Exhibit 17 that relates to different years of total landing fees related to passengers; is that correct?

A. Correct.

Q. And am I correct in suggesting that the purpose of looking at total landing fees in each year related to total passengers served in each year was an attempt to figure out what the actual landing fee charged to the airlines translated into with reference to a landing fee cost per passenger served?

A. Yes.

Q. And between 1983 and 1987 figures shown on Page 6 of Exhibit 17, does that suggest that there has been a significant decline in the actual landing fee charged to the airlines with reference to the passengers served by the same airlines?

MR. MALLETTE: Object, leading.

Q. (By Mr. Hunting) You can answer the question.

A. Yes.



[144] Q. And in 1983, it's indicated that the landing fees charged to the airlines, when translated into the per passenger served by that airline, was 76.37 cents per passenger; is that correct?

A. Yes.

Q. And the same equivalent calculations for 1987 done by you and reflected on Page 6 of Exhibit 17 shows that the landing fees charged to the airlines, when translated to the per passenger served by the airlines, is 59.71 cents per passenger?

A. Yes.

Q. And as I understand it, the adjustments for inflation or the CPI factor were not done by you, but were done apparently by someone else and reflected on Page 6 of Exhibit 17 offered into evidence by Plaintiffs?

A. Yes.

Q. In the CPI figures shown at the bottom of Page 6 of Exhibit 17, although not placed there by you, are you able to confirm that those, in fact, do represent the CPI index figures respectively for January, '83; January, '84; January, '85; January, '86; January, '87; and December of '87?

A. Yes.

Q. And are the CPI figures or components of different CPI figures, statistics and data that you work with in [145] conjunction with your job?

A. Yes.

Q. Since you have been with the airport, has it ever levied any local tax of any sort in an effort to generate revenues for any purpose?

A. No.

Q. And I take it although you were not able to calculate the precise amount currently outstanding or outstanding at the end of December 31, 1987, on the bonds, it is clear that there is remaining indebtedness from both the Series 1 and the Series 2 bonds?

A. Yes.

Q. And since the time that Exhibit 17 was prepared and since the time of the resolution in March of 1988, has there been any announced or accomplished mergers between any of the commercial airlines that have been serving this airport during 1988?

A. Yes, there's one in progress.

Q. And would you just identify which airlines are involved in that particular merger in process?

A. USAir and Piedmont.

Q. Have there been other mergers of airlines that have taken place during the period of time that you have been at the airport?

A. Yes.

\* \* \* \*

[158] Q. In your experience, is it typical for a major capital expenditure item in one annual budget to be carried over into another annual budget simply because the project either wasn't finished or because not all payments were made?

A. Yes.

Q. And I take it if you were to attempt to analyze major capital expenditure budgets on a year-to-year basis, you would have to track certain projects that may cover a number of different years?

A. Yes.

Q. If you assumed that for a particular year, and perhaps even a year such as 1987 or perhaps 1988, the total charges to General Aviation by way of fuel flowage and landing fees produce total fees less than the Buckley allocated costs to General Aviation, is that difference or shortfall in any way charged to the airlines under the Buckley method?

A. No.

\* \* \* \*

## DEPOSITION TESTIMONY OF CHARLES W. SEAMAN

\* \* \* \*

[49] Q Now, let's take that for a minute. If you have a pure residual methodology at an airport, and if GA doesn't pay its fair share, whatever that may be felt to be, then the commercial airlines are picking up the difference, are they not?

A Under residual cost, the airlines pick up the difference, no matter where it was generated.

Q In particular, if it's generated to some extent in general aviation, under a residual methodology, it directly impacts the financial pocketbook of the [50] airlines, does it not?

A To the extent that there could be a revenue producer on the airport, the answer is yes.

Q Or to the extent that they produce revenues at the airport, but less than what the airlines believe they should produce at that airport, under a residual methodology, it's the airlines that are financially impacted by any shortfall; am I correct?

A Under pure residual, that's correct.

\* \* \* \*

[60] (By Mr. Hunting) Are you aware of any lease of United Airlines anywhere in the United States with an airport where the word or doctrine "interdependencies" is defined in the body of the lease or agreement?

A No, I can't remember that word being featured in any agreement.

Q Whether it was featured or not, do you know of any particular lease anywhere in the United States where United operates where the word interdependencies is even used, whether it's featured or defined or not?

A Not that I can recall.

Q Have you personally engaged in any study in any effort to apply the doctrine of interdependencies to the facts of this airport or this community?

MR. MALLETTE: I'll object. There's no testimony as to the doctrine of interdependencies or no definition.

You can answer, if you can.

[61] A I have not seen or participated or conducted any study.

Q (By Mr. Hunting) Have you conducted or seen any study that in any way attempts to deal with tracking the costs of producing a flow of passengers at any airport in the United States?

A I can't say no. I'll just tell you I can't recall any.

Q I take it in particular, you don't recall any such thing as it might relate to this airport; am I correct?

A That's correct.

\* \* \* \*

[69] Q Are you aware of any instance where United Airlines approached a decision to come into an airport to initiate service in the hope that United could share some of the concession revenues of that airport?

A I need to have you restate that one.

Q I'm going to have her repeat it, and then, if I have to, I'll restate it.

(Whereupon, the question was read back by the court reporter.)

A No.

Q (By Mr. Hunting) Are you personally aware of any situation where United decided to either come into an airport, leave an airport or change the frequency of its operations at an airport because of any considerations that related to the flow of passengers at that airport?

A No.

Q Have you ever, as best you can recall, at any time that you personally participated in negotiations with airports or supervised people at United who did that, indicated that someone should look at comparable rates for purposes of those discussions?

[70] A - No.

\* \* \* \*

[84] Q In particular, directing your attention to Interrogatory # 10, do you personally have any knowledge



of any facts that relate in any way to any claim of illegal monopoly in this case as it relates to this airport?

A No.

Q Personally, do you today have knowledge of any facts that in any way relate to any aspect of any interstate commerce clause violation issue that might exist in this case?

A No.

\* \* \* \*

[87] Q (By Mr. Hunting) Have you at any time in any United Airlines lease at any of the hundred nineteen or hundred twenty airports in the United States between 1985 and the present seen any paragraph or clause that refers to the "cost of providing passengers at an airport" in a way that would apply that cost to rate making procedures?

A No.

Q So far as you know, are general aviation users at most airports in the United States charged some type of fuel [88] flowage fee?

A That's one of the methods, yes.

Q Do you happen to know what the range of that might be, in terms of cents per gallon for the last number of years?

A No, I have not been in touch with that.

Q Do other airports in the United States, if you know, also have separate charges to general aviation for tie down privileges, rent for hangars and so forth?

A Yes.

Q And as I understand your testimony, you have no opinion today on behalf of United Airlines as to how this airport should or should not handle its general aviation users; am I correct?

A That's correct.

Q Have you ever performed any study of airports with reference to comparing the net operating income of the

airport either to revenues or to the value of the airport or the local historic cost of the airport facilities?

A No.

\* \* \* \*

[97] Q What if the surplus is created by payments made by the public for parking and for use of a motel and for stamps and insurance and restaurant? If you haven't studied the charges that the public pays for that, how does that have some relationship to what the airlines use and pay for?

A Well, you brought up the word interdependence. All those facilities that are part of the total airport complex are interdependent. I mean, the parking garage depends upon the roadway system, and the roadway system delivers people to the terminal building, and the people that arrive at the terminal building arrive by the roadway, or they park their car in the garage. They're all interdependent and if the costs are interdependent, so are the revenues.

Q If the parties can't agree on how to quantify this interdependency, who then would do it for the parties?

MR. MALLETTE: I'll object to that. That's a legal conclusion. In fact, the district court is going to do it. He can answer, if he knows.

A Well, I can't say how it's going to come out in Grand [98] Rapids, but—

Q (By Mr. Hunting) You—excuse me.

A But if you have—you know, that's a normal type of debate as to how you allocate cost and revenues from one cost center to another, recognizing the concept of interdependence. Just as there are dozens of kinds of lease agreements, there's probably dozens of different ways to allocate costs. So, if a debate is in process, either party may want to call in some help to participate in the debate and reach some sort of a conclusion. Conclusion means the agreement's been signed, and life goes on. If there's no conclusion and the debate rages on, then the agreement's usually expired, and they're not renewed.

Q Now, as I understand it, you've made no specific study of interdependency, true?

A No specific study, no.

\* \* \* \*

[108] Q I take it you have no personal knowledge of any of the expenditures of the Kent County Road Commission on any of the public roads that bring people to and from the airport; am I correct?

A That's correct.

Q I assume that obviously, all airports in every year will have some projects for refurbishing, expanding or changing some aspect of an airport?

A It's very common.

Q Have you studied any of the agreements or contracts between the airport and any of the entities that provide nonaeronautical services or products at this airport?

A No.

Q Based on anything you know, are there any non-aeronautical products or services currently provided at this airport that, in your opinion, should not be provided at all to the public or passengers who come here?

[109] A It wouldn't exist if it didn't have a demand, and if it has a demand, it belongs here.

\* \* \* \*

[119] Q I have only one question. You worked for Hertz, correct?

A That's correct.

Q When the rental car companies pay an airport ten percent of their revenue, is that payment for the square footage they occupy in the terminal or for access to the flow of airline passengers?

A It's for access to the flow of passengers.

\* \* \* \*

# TRIAL TESTIMONY OF RICHARD K. DOMPKE

\* \* \* \*

[124] Q On January 1, 1987, what was the total cash and cash equivalent such as money market fund investments of the airport, including both regular accounts and so-called restricted accounts?

A Approximately six-and-a-half million dollars.

Q And what is that figure now? Well, what is that figure as of December 31, 1989?

A Just slightly over nine million.

Q I call to your attention Plaintiffs' Exhibit 1 and 2, and on Plaintiffs' Exhibit 1, which is year end of December 31, 1985, I'll ask you to turn to Page 3 and tell us when that was issued by the accountants.

A February 28, 1986.

Q And would you look at Page 5. What was the net income for the Board for the year ended December 31, 1985?

A The reported net income was \$1,914,332.

Q Exhibit 2 is for the years ended December 31, 1986, and 1985; is that correct?

A That's correct.

Q And I'll ask you to look at Page 5 of Exhibit 2. There are two columns. One's for '86 and the other '85.

[125] A Yes.

Q And I'll ask you to look at the bottom of Page 5 of Exhibit 2. What is the net income there reported for 1985?

A Well, at this point in time it is now reported as \$2,378,502 for the same year.

Q Between the 1985 financial statement that was issued early in 1986 and the 1986/1985 financial statement which was issued early in 1987, it appears that the 1985 net income has changed from \$2,378,000 to \$1,914,000; is that correct?

A That's correct.

Q How can the net income be different on two different financial statements of the authority for the same



year? Can you tell that from looking at the financial statement?

A Yes. There is a new line item there under non-operating revenues titled "Interest Revenue on Restricted Assets" for 1985. That's \$464,170, and I do believe if you either subtract that from the number reported here on Bates number 217 or add it to the number reported on Bates number 195, you will see that that's the difference between those two numbers.

Q Suppose, as has been stipulated, that the airlines between August 1—now, look at 1984 on Exhibit No. 1. The net income is \$1,438,000; correct?

A Yes.

\* \* \* \*

[140] Q Are there costs involved or any integration of the airport or anything of that nature involved in producing customers for that parking lot?

A Certainly. Every customer in the parking lot passes through the roadways leading into the airport, and he also passes through the terminal and through the airfield. And his share, his proportionate share of the costs of getting to and from that parking lot should be associated with him. That parking lot wouldn't exist if it were dissociated from the roadways and the landing field.

Q Calling your attention to the rate study, am I correct that a correction was issued to the rate study soon after it came out with respect to the square foot rental on Page 2?

A Yes. I understand that a letter was produced by the airport, sent to the airlines correcting the rate per square foot from the amount shown in the rate study to the ordinance amount.

MR. HUNTING: So the record is clear, that was done prior to the time the ordinance was adopted. The airport had the courtesy of sending a draft of this report to the airlines before the ordinance was filed. That correction was made before the ordinance was filed.

MR. MALLETTE: Fine, and we would certainly accept that and so stipulate.

[141] BY MR. MALLETTE:

Q Then where we have this \$25.32 and \$12.66, we should put in the ordinance rates; is that correct?

A Yes. You want those?

Q Yes. What are they?

A \$24.67 for the enclosed air-conditioned, commonly referred to as prime; and \$12.34 for the enclosed air-conditioned, heated unfinished, commonly referred to as non-prime.

Q In November and December of 1989 did the airport issue another alleged correction to the rate study, this time dealing with landing fees?

A Yes, they did.

Q And does the information that they provided to us give you sufficient information to verify the accuracy of that one way or the other?

A No, it did not.

Q In this rate-making methodology they have cost centers, they allocate costs to the cost centers. Are there any costs that you believe are not real or should not be involved in their rate-making methodology?

A Yes. Definitely the carrying charge.

Q And how is this carrying charge computed?

MR. HUNTING: I'm going to object, Your Honor. Again, I don't believe this Witness has testified that he has any familiarity with the extent to which a carrying charge is [142] adopted by other airports in similar circumstances.

MR. MALLETTE: Well, I believe he can testify how this carrying charge compares to the depreciation on their assets and how it compares to the amount necessary to pay their bonds. Now, if there is any rationale for a charge being made with respect to the airport's fixed assets, it is our contention it ought to be on the basis that, one, we're depreciating the assets and we're paying

depreciation; or two, we've got bonds out and the users have to pay the principal and interest. We intend to show by this line of questioning that the carrying charge greatly exceeds the depreciation on the items, and it also greatly exceeds the debt service on the items.

THE COURT: Well, I'm trying to follow here. I think—did you jump to Page 6 of that report? Is that where we are?

MR. MALLETTE: Oh, I'm referring to Exhibit 6.

THE COURT: I'm aware of that. But are you on Page 6? Where are you?

THE WITNESS: May I help you?

BY MR. MALLETTE:

Q Yes. Could you tell me where you will find the carrying charge?

A You won't find the carrying charge in this study as such, a number. You have to ferret it out again.

[143] Q Would you ferret the carrying charge out from Exhibit 6?

A Yes.

THE COURT: I think it might be handy for all of us if we knew what the carrying charges as defined were, because I sense that each of us has our own rough definition unless defined, I think, before I can deal with that. I presume that question has been withdrawn, but let's get back to some more fundamentals here.

THE WITNESS: I—

THE COURT: Excuse me. You ask the question.

MR. MALLETTE: Yes.

THE COURT: The ball's in your court.

BY MR. MALLETTE:

Q I will ask it. Would you explain how the—is the carrying charge defined in Exhibit 6 as such? Is there a definition that I could turn to and find?

A There probably is in the text, but I find the best way to define the carrying charge is to look at an exhibit

and see how it is computed and then look at another exhibit and see how it totals to the total number.

Q Fine. Would you tell us which exhibit shows how it's computed?

A Well, the first one we would come to would be—I think it's best to refer to the Bates number. I believe it's 000988. Yes, 000988. It's titled "Average Annual Charge [144] Attributable to Depreciable General Purpose Investment."

Q I see that. Go ahead.

A I believe it's Exhibit 5 within Exhibit 6, page—I'm sorry.

Q Page 1 and 2 of that Exhibit 5; is that correct?

A Right, Page 1 and 2.

Q Okay. Go ahead.

A Well, the methodology followed here is to take the original cost of the investment and subtract from that federal aid and state aid and come up with a number referred to as "Net for Rate Base," Column 5. And then they have a column there called "Useful Life" in months which Mr. Buckley defined as economic useful life, and I believe that's different than the accounting depreciation life. The next—actually, the next three columns are the computation of monthly carrying charges. The title there, "Monthly Carrying Charges," applies to interest and amortization, and that's at eight percent. Then the next column is "Periodic Maintenance," which works out to be half a percent, and then there's a column called "Total Dollars."

Now, the column "Total Dollars," 9, they don't indicate this, but I'll help you, is Column 5 times the summation of Columns 7 plus 8, and that's how they compute the dollar amount in Column 9. Then the next column shows the use beginning—I'm sorry, that's "Use Begun or Begins On." They [145] show the date of initial application of the carrying charge. Then the "Months in Use," and Column 12 again is the computation of that. Column 9 times Column 11 gives you the monthly—I'm



sorry, that's for the entire three years, because they show the months in use there. I can't read it, but I think it's 36. So it would be for the entire three-year period of the rate study is going to be that column. So the heading up there says "3 Years Beginning 1-1-84." It should obviously be 1-1-87. It just wasn't changed for the updated study.

\* \* \* \*

[146] Q Now we're at the average annual, and that's \$22,000, and I take it they sum up everything in the rate study and you arrive at a total someplace; correct?

A Yes. You sum these carrying charges for these various asset categories and carry them forward and back to Bates number 000985, and it's not titled as such, but the first three columns there represent the carrying charges from the subsequent exhibits, one of which we went through, the column headings, anyway. But the columns indicated here as 2, 3, and 4 are carrying charges. You can see the totals at the bottom of those columns, you add those totals, they come to \$2,217,502 per year of carrying charges.

Q Now, the carrying charge, that is a basis upon which the rate study charges for the fixed capital assets; is that correct?

A Yes. It's their way of—I would define it as capital cost recovery.

Q And how does that capital cost recovery compare with using depreciation or using the bond principal and interest payments [147] with respect to any debt that remains on those assets?

A Considerably higher.

Q I hand you Exhibit 327 and ask you what that is.

A That's a comparison of capital cost recovery approaches taking the rate study approach that we just went through and comparing it to an income approach or a coverage approach.

Q Now, do businesses and other enterprises in the United States look at recovering or considering as a cost their fixed assets as they depreciate?

A Yes, but on a depreciation basis. The normal business approach is to take depreciation as a cost item, expense item.

Q And I note that you have added to that debt service interest in an income approach; is that correct?

A Yes.

Q And then your coverage approach, you would be looking for, what, debt service on the debt outstanding on the fixed assets plus some coverage; is that correct?

A Plus the normal coverage.

Q And you're talking about what, 40 percent of the debt service?

A For this illustration I computed a 1.4 debt coverage ratio.

Q Am I correct, then, that they are charging far more, as shown by Exhibit 327, in the rate study for their fixed assets than they could charge if they simply charged depreciation? [148] Is that correct?

A Yes.

Q Does that have a serious impact on the rates produced by the rate study?

A Oh, quite definitely. Almost an additional million dollars in terms of comparing it to the income approach; a million three compared to the coverage approach.

Q And then that gets broken out among all the users, and part of it, of course, goes to the airlines and part to the other users; is that correct?

A That's correct.

Q Can you determine a reasonable rate for this airport by just taking out the carrying charge and computing everything on depreciation or debt service?

A Not completely.

Q Why not?

A Because this is only one factor involved in the rate study. There are other factors that are also a problem.

\* \* \* \*

[155] Q Based on your total, without going over every line item, based on your total review of the rate study, which is Exhibit 6, and based on your review of any corrections you have seen to that issued at any time, what are your conclusions as to the allocation of costs to the various revenue-producing cost centers?

A I think they were done in many cases on an arbitrary basis, certainly illogical in many cases, and I think in sum total unreasonably.

Q How about the allocation of costs to users in the terminal building? Does the rate study allocate costs to users in the terminal?

A Yes, it does.

Q And on what basis does it do that?

A Well, that's covered here. Shall we go to the particular pages that that applies to?

Q Fine, or you can just tell us how they do it, either way.

A Okay. Well, they come up with, again, a so-called break-even cost, which again includes carrying charges on the assets involved in the terminal building, and then to that they add their real costs of operating and maintenance expenses, and then they divide that by space which they characterize as rentable square footage to come up with a space rental rate.

[156] Q And is that the basis on which they allocate the cost of the terminal between the concessions and the airlines?

A Yes.

Q Approximately how does the space rented in the terminal building stack up between the space actually—well, the space assigned to the airlines and the space assigned to the concessions?

A My computation, it's 76 percent of the space, rentable space is charged to the airlines.

Q So on that basis most of the costs of the terminal are charged to the airlines; is that correct?

A Definitely.

Q Now, when you look at the rental car companies, am I correct that the rental car companies have small booths near the passenger baggage claim?

A Yes, they have their counters there.

Q When you compute the square footage and multiply it by the prime rate, can you tell what costs the rate study allocates to rental car companies?

A Yes.

Q And what costs are they?

A Well, in the terminal building, just for their counter space, about \$28,000.

Q How much income do the rental car companies pay to the airlines pursuant to the agreement that lets them operate [157] their booths in the terminal building?

A I believe you mean to the airport.

Q I'm sorry, to the airport.

A Over \$650,000 per year.

Q So the rate study, Exhibit 6, allocates \$28,000 in costs to the rental car companies, yet the income is \$650,000; is that correct? That is to the airport?

A That's correct, to the airport.

Q Does that indicate anything to you about the validity of their cost assignment; and if so, tell us why?

A Well, it indicates to me that their cost assignment is ignoring a significant portion of the costs that should be properly allocated to the rental car concessions.

Q What do the rental car concessions pay for pursuant to their agreements? Well, first of all, on what basis do they pay? Do they pay so much per square foot or do they pay based on a percentage of the business they do?

A They're paying ten percent of their revenue that they generate at that airport.

Q And is that paid for that small amount of square footage, or is it paid for their access to the flow of airline passengers?

\* \* \* \*



[158] Q Do you have an opinion as to whether the rental car company is paying for the access to the passenger flow or for that square footage? I'm just asking do you have an opinion?

A Yes.

\* \* \* \*

Q What's the basis for your opinion?

A Based on all of my years of experience with cost accounting systems, cost allocation systems, cost estimating, [159] other aspects of businesses, I have never run into situations with that sort of relationship between so-called costs and the revenue-generating capability of those costs.

Q Have you looked at the leases of the rental car companies?

A Yes.

Q Can you tell us whether or not they have an escape arrangement so if the airport gets closed they don't have to stay there; that is, if it can't operate as an airport?

A Yes, they do.

Q Based on their leases and your examination of their leases, and based on your general knowledge of business and industry, are they paying for access to the passenger flow or are they paying for the small square footage that they rent?

A It's obvious to me they're paying for the access to the passengers.

Q Is there advertising revenue in the terminal?

A There is an item identified as advertising media revenue, yes.

Q And how does the rate study, Exhibit 6, or any corrected rate study you have seen deal with that?

A It is subtracted—at least \$50,000 of advertising media revenue is subtracted from the costs that are needed per the Buckley methodology to determine the break-even costs from the terminal building.

Q Is any other concession revenue treated in that manner?

[160] A No.

Q Is that stated to be, what, wall advertising?

A Yes.

Q What is the total amount paid to the airport for advertising in the terminal building per year?

A The contract with the advertising company indicates that over this three-year period of this rate study, it averaged—I believe it was about \$170,000 per year. It was a stepped basis, going up each year.

Q And is there any cost allocated to the advertising user, the company that has that contract, in the rate study? Does it allocate any of the costs of the terminal to them other than the \$50,000 deduction?

A No. There is no area designated in the rate study or in the floor plan map of the terminal building designated for advertising media.

Q Are there any other users of the terminal that have no costs assigned to them by the Buckley methodology—by Exhibit 6, I should say?

A A considerable number.

Q And who are they?

A Well, you have the food and concession areas that are located in the concourse. You have vending machines; you have the baggage carts, baggage cart racks, that is; you have all the telephones throughout the terminal; baggage lockers. [161] Well, then in the baggage claim area there are a number of things such as the direct lines to the hotels and motels with a display board. I can't think of any others.

\* \* \* \*

[163] Q I call your attention to sheet A3 of Exhibit 23 and ask you if you note that there is Concourse A shown, and there is a large pink area in the concourse which is a large corridor marked "Concourse" running along the concourse. Do you see that?

A Yes, I do.

Q Is that pink area treated as public area in Exhibit 6?

A It's designated as a public area, yes.

Q And as public area, it would be charged primarily to the airlines; is that correct?

A Yes. The way the relative square footage, rental square [164] footage works out, 76 percent of the cost of that area would be going to the airlines.

Q Are there any users, other than airline passengers who may be walking through the concourse, are there any users in that concourse currently during the period you have known the airport?

A Yes.

Q And what are they?

A Well, they have food and beverage carts with roped off areas with tables where you can have yourself a little snack while you're waiting for your flight. Then again, the walls are loaded with display advertising. They have again the baggage cart, the baggage lockers, telephones, vending machines spread out up and down the concourse.

Q And is there any point in that concourse at which you don't have a concession offering to sell you some type of goods or services or advertising somebody else's goods or services?

A Well, I didn't notice any in the men's room.

Q And how about the other concourse? Is that the same situation? By that I mean Concourse B shown on the plans.

A Yes. I toured the entire terminal building, every room, except the women's room.

\* \* \* \*

[165] Q And in the parking lot, how much in costs are allocated to the parking lot by the rate study, which is Exhibit 6?

A As I recall—well, you won't find—I'm sorry. I believe you can find—I think I better lead you to it because I don't want to misspeak here.

On page number 000985, again you'll see a line there. Well, you go down the revenue producing area list and there's one that's a subcategory there or category there called Public Auto Parking, and there's a sub under that, A. Passenger Terminal. And if you follow that all the way over to the Grand Total column, they're allocating \$687,550 to the [166] passenger terminal parking lot.

Q What's the revenue from the passenger terminal parking lot?

A Well, almost a million dollars a year more than that.

Q So the revenue is a million dollars greater than the cost; or, put another way, the revenue is nearly, what, three times the cost?

A No, I wouldn't put it that high. Well, we're dealing with a total revenue here, let's say, of about one million seven, so \$687,000 off of that then leaves you with a million dollars of net income or profit from the public auto parking lot.

Q Does that fluctuate slightly from year to year?

A Oh, yes, yes. I don't—in terms of the revenue, it fluctuates more than slightly. I think it's rather dramatically. It's been increasing.

Q And does the parking lot in the regular computations, in the regular bookkeeping of the airport, is the parking lot considered as a revenue center by itself or is it thrown in with another revenue center? How do they handle it on the financial statements?

A On the financial statements it's combined with the passenger terminal building.

Q What is your opinion of the cost allocation with respect to the parking lot of the rate study? Do you believe it's correct or incorrect?

[167] A Oh, I believe it's incorrect.

Q And why is it incorrect?

A Well, again, it's evident to me that they're under-allocating costs to the parking lot, other airport costs.



Q Is the parking lot dependent in any way on the airfield and the terminal for its operation?

A In my opinion, to a considerable degree. Completely.

Q And what's your opinion of the cost allocation between the airlines and the users, other users in the terminal building? Do you believe that's correct or incorrect?

A Well, I believe it's incorrect.

Q And why do you believe it's incorrect?

A Well, as I am hopefully demonstrating here, there's considerable space in the terminal building that is designated as public space which is in fact concession space because they're deriving the revenue from that space, and then also at the same time the baggage claim space, in my opinion, is concession space. They're the ones that are deriving revenue in the baggage area.

Q Being specific in talking about the rental car, do you believe the allocation of \$28,000 to the rental car company is valid in face of the 600-plus thousand dollars income from them?

A No.

Q Now, are there any errors in the rate study that don't [168] involve the methodology or its application or cost allocations, but just involve mechanical things like misadding or something of that nature?

A Yes. There were some that were pointed out to us during depositions of the airport staff, and there were others which I noted while I was sample-checking various allocations.

Q Let me ask you simply, are they correct on their carrying charge where they determined how many months of life are involved during this period with respect to items?

A Well, I checked one table here. I didn't go through the others, but the first table, it's likely the first one and—

MR. HUNTING: Can we have the page, sir?

THE WITNESS: I'm sorry. 000988. I'm back to that one. And what I did was take a look at the number of months in use column there and compare that to the useful life versus when useful life began date and noted that six of the 24 items actually ran out of life during the rate study, whereas the annual charge was computed for the entire three-year period.

BY MR. MALLETTE:

Q During your attention to Exhibit 6 and its applications out in the landing area, am I correct that crash/fire/rescue, the operation cost of crash/fire/rescue is simply allocated directly to the airlines?

A I would say it's charged directly to the airlines in this study, 100 percent.

\* \* \* \*

[172] Q I call your attention to the allocation to general aviation, Exhibit 6 at Page 4, and ask you how much is allocated to general aviation?

A \$650,000.

[173] Q And did the Board use Exhibit 6 to determine charges to general aviation?

A No.

Q What is the charge to locally based general aviation of the Board to pay for locally based general aviation's use of the landing area; that is, the runways and taxiways?

A They are billed based on a fuel flowage chart of four cents per gallon.

Q And how much does the 1988 budget show that that fuel flowage fee is designed to bring in?

A \$100,000.

Q And how does that compare with the \$650,000 in costs that the Board's Rate Study says they should bear?

A Obviously, it's \$550,000 below the costs.

Q And do you know what historically over the years the landing fee charged to itinerant, that is, non-locally based general aviation brings in?

A Well, they pay the landing fee, at least, the itinerant would pay, and that dollar amount—

\* \* \* \*

[175] Q And the non-commercial, non-passenger airplanes, that is, the corporate planes and private planes that are based here are charged four cents per gallon fuel flowage fee which is designed to raise \$100,000 a year; is that correct?

A Yes.

Q Over the three-year period, what was the airport's experience in the amounts actually raised from that fee?

A Well, it was slightly less than that, I believe. As I recall, somewhere around in the \$80,000, \$86,000 range.

Q And how about the fee on itinerant general aviation; that is, planes that are non-air carrier but just fly in from some other airport? Historically, about how much is raised from them in the way of landing fees?

A Fourteen, fifteen thousand dollars a year.

Q With respect to locally based general aviation, how long has the four cents a gallon fuel flowage fee remained at the same rate?

A Since 1963.

Q And since 1963 what is the approximate percentage increase that the fees for use of the landing area assessed to the airlines has increased?

A About 300 percent.

\* \* \* \*

[177] Q If you'll turn to Page 4 of Exhibit 6, the rate study, and I'll ask you what the break-even costs of the passenger and terminal apron are.

A \$222,877.

Q To what users are the costs of the passenger terminal apron assigned by the rate study?

A Well, it's 100 percent to the scheduled airlines and becomes part of their landing fee.

Q And is that Column 3 on Page 4 of Exhibit 6?

A That's correct.

Q Are the airlines paying for their gates in the terminal?

A Yes.

Q Am I correct, then, that the airlines are being charged a parking fee for parking at the passenger terminal that has already been charged them through the landing fee, and that they are paying, then, something like four times the costs that the rate study says should be recovered by that parking fee?

A Yes.

Q In the past, historically, has the airport had sufficient funds to pay its bonds, principal and interest, including the bonds that were actually paid from a tax levy back in the '60s?

A Yes.

\* \* \* \*

[190] Q If there is an asset of the airport which is a capital asset, how does the Buckley methodology charge the cost, the [191] capital cost of that asset out to the users of the airport?

A Through the carrying charge vehicle.

Q And how much of the actual cost is recovered by the carrying charge?

A Well, in terms of the local share, the contribution from local—alleged local sources, it charges that based on the carrying charge, which ends up, in effect, being doubled, approximately, of what it would have been if they had just used appreciation for those assets, for that same value of assets.

\* \* \* \*

[193] Q Certainly. Suppose that the Board over a period of years collects money from the users at the airport, puts it in its [194] common pot, and then takes out the money and buys a capital asset. Am I correct that the users through their prior user charges have paid in to the Board the amount of that capital asset?

A Definitely.



Q What happens, then, when the capital asset is placed in service?

A Then the Board starts charging a carrying charge on that capital asset.

Q And under the rate study methodology do they charge that out and prorate it out on their cost accounting—well, on their cost allocation basis, whatever it is, to the various users?

A Yes, they do.

Q And if there is prefunding and then the carrying charge of the rate study is applied, how many times will the users pay for that improvement?

A At least twice, and if you want to view it from the standpoint of the local funding aspect, it probably is about three times.

Q I understand that we are not—were you in your answer not including the federal funds component?

A That's right.

\* \* \* \*

[321] Q Okay. Now, did you take this net income, treat it in this way and compare it to any other airport in the United States?

A No.

Q What about positive cash flow and the way in which you derived that? Did you take that and compare it to any airport in the United States?

A No.

\* \* \* \*

Q Did you make any effort to contact any airport property manager or airport agent who has actually testified in this case to check with them regarding any aspects of the rate proposals you have calculated?

[322] A No.

Q I take it you knew from reading the general principles of Buckley that he clearly set forth in those general

principles the proposition that the non-aeronautical or the concession revenues of the airport would, under his methodology, continue to belong to the airport?

A That's what he said.

Q There was no question about that in terms of his intent; am I correct?

A I agree.

Q And you wouldn't have to be a cost accountant to read it and to know that; am I correct?

A You're correct.

Q So even though the airlines may have disagreed for a long time about that particular proposition, would you agree with me that Buckley had very clearly set it forth in his general principles?

A Yes.

Q And those general principles are referred to by reference in the very first sentence of the rate-making study, which is Exhibit 6; am I correct?

A I don't recall which sentence it appeared in.

Q But they were referred to?

A Yes.

Q And did you assume when you first became involved in this [323] case that the airlines knew what those general principles were?

A I assumed they did, yes.

Q And at least the general principles that the airport would retain concession or non-aeronautical revenues had been a very consistent experience throughout the entire Buckley methodology, had it not?

A Yes.

\* \* \* \*

[329] Q Grand Rapids is not a hub airport; am I correct?

A Well, the AAAE Survey classifies it as a small hub. I don't understand why, since no one refers to it as a hub.

Q So we can agree that it's really not a hub?

A We'll agree.

Q And can we agree that that means that most of the people are origin and destination people as it relates to the community?

A That's what that means, yes.

Q Most people flying out of Grand Rapids are taking a round trip to come back to Grand Rapids?

A Yes.

Q So if those are the kind of people that are spending the money on the concession activities, they're the ones at least putting in that share of the concession revenue that may ultimately be part of the net income; am I correct?

A It will be a part of the net income, that's true.

Q And that's not the only way in which citizens contribute to an airport financially, is it? There could be taxes?

A Well, yes, there could be.

Q And they pay an eight percent tax when they buy a ticket, [330] do they not?

A Yes.

Q And that money goes to a federal fund, does it not?

A Yes.

Q And then that federal fund, in manners determined by the FAA, parcels out money to airports for projects and expansion purposes?

A And I presume that Grand Rapids gets its fair share.

Q My point is that the eight percent tax paid by the local citizen generates money that comes back into the airport; correct?

A Yes.

Q Obviously, you may not be able to trace the dollars, but the general principle is if you're paying the ticket, it's going to go into some airport somewhere through the FAA for some approved project?

A That's correct.

Q So in that sense citizens of communities are either supporting their own airports or they're supporting other airports, and people in other communities are helping us support our airport?

A Unfortunately, that's the truth of the situation, I would say.

\* \* \* \*

[334] Q Mr. Dompke, I'd like to pick up, if I can, where my best recollection is that I left off, and that was dealing with the proposals that you were sponsoring with reference to rates, those that were taken from deposition Exhibit XX and carrying a number of exhibit numbers in the 300s. Do you have those in front of you, sir?

A I believe so. I have some of them, perhaps not all.

Q Okay. What I'd like to do first, if I can, is to approach those proposals from a general point of view, and if I'm correct in recalling your deposition testimony, all of the proposals are in one form or another a residual methodology; [335] am I correct?

A I would say yes.

\* \* \* \*

Q Are we sort of homogenizing users, then?

A Homogenizing?

[336] Q Standardizing?

A We're treating all users equally.

Q Non-aeronautical as well as aeronautical?

A Yes.

Q So that would be a substantial departure from the historic Buckley approach, would it not?

A Oh, yes.

\* \* \* \*

[381] Q Are you aware of the fact that the totality of the landing fees, overnight aircraft parking fees, and terminal rental rates paid by the airlines in this case to this airport constitutes less than two percent of the airline revenues produced on a per-passenger basis?

A Produced where?



Q In Grand Rapids.

A I'm not specifically aware of that, no.

Q Did the relationship between the totality of the airline landing fees, overnight parking fees, and terminal rental rates, when compared to the revenues generated by the airlines by virtue of ticket sales, enter into any of your considerations with reference to any of your proposals?

A No.

Q Did the ability of airlines to make or not make a profit at either the old rates or the new rates enter into your [382] proposals to any extent?

A No.

Q As I understand it, you have built into your proposals some aspect of the concept of interdependency or dependency at this airport; am I correct?

A Yes.

Q Did you in that sense do any mathematical calculations before the time that the assumptions were made that are reflected in your exhibits?

A I did mathematical computations. I don't understand—I did mathematical computations.

Q And did you assume that the airlines were a hundred percent responsible for the flow of passengers in the airport?

A I wouldn't characterize it as them being a hundred percent responsible, no.

Q Did you quantify it or make any assumption specifically as to the percentage of responsibility as between the community and the airlines regarding the presence of people in an airport that you have called the flow of passengers?

A Well, I understood the study related to the costs relative or incurred in the airport. So my view has been confined to the activities within the airport boundaries.

Q Did you at any time consider or attempt to quantify the extent to which the community is responsible for

bringing people to the airport, either enplaning or deplaning?

[383] A No.

Q Did you at any time review any aspects of the master plan study underway at this airport?

A I have not seen that.

Q You're aware that it is ongoing or not?

A I understand that there is one, yes, being prepared.

Q And are you aware that the airlines are provided with all of the documents that relate to the master plan so that they can review it and provide whatever input they might feel is appropriate?

A Yes.

Q I would assume in your job you've been involved not only in cost allocation, but you've been involved in the preparation of revenue budgets and expense budgets?

A Yes.

Q And I take it you would agree from a business person's point of view that the further you can look into the future and try and crystal ball the nature and extent of the expenses your business might have, the better off you are in making current and near-term business decisions?

A Yes.

\* \* \* \*

[392] Q And the landing fee at Kent County has a 50 percent factor attributed to the weight of a plane and a 50 percent factor attributed to the frequency of landings; am I correct?

A Yes.

Q So that component of the so-called total landing fee has never changed for any of the years you've studied the Buckley plan. Am I correct?

A Yes.

Q The Indianapolis landing fee contested in that case had a different weighting, did it not?

A Yes.

Q And there, 90 percent of the total of the landing fee was related to the weight of the aircraft and ten percent was related to the frequency of landings. Am I correct?

A Yes.

Q So that type of 90 percent/10 percent landing fee involved in the Indianapolis case placed a much greater cost burden upon the commercial airlines than would the type that this airport has?

A That's true.

\* \* \* \*

[397] Q Would you agree with me that the stated purpose of the Buckley methodology is to allocate costs rather than allocate revenues?

A That's the stated purpose, yes.

Q And in multiple different ways, your proposals or the proposals you worked with others on allocate costs and revenues?

A I would say that it allocates costs, and in many cases allocates costs based on revenue.

Q Did you personally make any study to determine whether a cost reduction or reduction of the rates, fees and charges in this case would automatically lead to a reduction in passenger ticket prices?

A No.

Q Have you looked at other airport methodologies to [398] determine how they handled depreciation for periodic maintenance charges?

A Not as a specific study, no.

\* \* \* \*

\* [402] The rate study obviously refers to a number of past costs that had been incurred and which are carried forward over a period of time which may be a useful life. Can we agree that there is no question about whether there's a fraudulent presentation of costs incurred?

A No question in my mind that the assets shown there are in all probability true assets.

Q And there's no question from your vantage point regarding the wisdom of the past expenditures of the air-

port from a management point of view, as I understand it; am I correct?

A You're correct.

\* \* \* \*

[404] Q And we all recognize by now that this dispute in large part is because of that statement of philosophy or principle of Buckley with which the airlines do not agree?

A I would not agree with that.

Q There are other disputes, or that's not a large dispute?

A Well, I don't believe the issue is cross-crediting of excess revenues. I believe the issue is one of proper crediting of costs.

Q Okay. The net result of which is to shift revenues, certainly, if you go to a residual lease; am I correct?

A To me the net result is shifting of costs.

Q The net effect of which would be to reduce airport—

A That's correct.

Q Excuse me. To reduce airline charges?

A Yes.

Q And I take it you're not moving costs around without also looking at how you would move revenues around?

A That's true. I think we've demonstrated that.

\* \* \* \*

[441] Q I'd like to close with several questions dealing with what I think Mr. Horngren has called the due process setting in which these rates are established. Bear with me for a moment. Federal money is deducted before the costs are collected and distributed. Am I correct?

A Yes.

Q State money is deducted before the costs are collected and distributed?

[442] A Yes.



Q The airlines can leave the airport if they either don't like the current charges, the current business community, what they see in terms of future costs to be expended. Am I correct?

A They may leave, legally speaking, yes, it's my understanding.

Q And if they leave, it's without a forfeiture in the lease, certainly, under circumstances where there is no longer any lease. Am I correct?

A You're correct, my understanding.

Q And their capital investment at the airport would typically be relatively insignificant as a percentage of the landing fees, terminal rental rates paid to the airport, would it not?

A I don't know that for a fact.

Q Whatever it would be would have been depreciated over the years by the airlines, would it not?

A In all probability.

Q And if there is any major contract that the airport has on the horizon, no matter what it's for, a new runway, expansion of a terminal, there is at least some lead time to the airlines to look into it, to learn about it, to attend meetings, to protest, and to even wait until the particular project may be approved and implemented. Am I correct?

[443] A Yes.

Q And most of these contracts as it relates to construction of items at the airport are put out for public bid, are they not?

A I believe so.

Q And typically the public bidding process is supposed to be a competitive process that is supposed to lead to lower bids that can be accepted if the process works in optimum fashion?

A That's my understanding.

\* \* \* \*

# TRIAL TESTIMONY OF CHARLES T. HORNGREN

[474] Q Does the rate study properly allocate costs to the various users in the terminal building?

A In my opinion, it does not. I think that I should preface that conclusion by expressing my overall philosophy on this stuff.

Q Would you please do so?

A Well, I think that I go at things in as objective a manner as I possibly can. I try to examine a problem in its entirety. I never try to lose sight of the big picture. I think that you should always start by looking at the grand total, and whatever problem you're studying, you should back off and look at it in the large in the context of costs and revenue analysis. I think it's important to never overlook the interrelationships of the economic activities in a particular entity. In this case the entity is the airport. And therefore, I've reached a conclusion that the rate study [475] does not recognize those interrelationships in an appropriate way.

Q How about the allocation of costs to the various users in the terminal? What is your opinion of the way the rate study goes about doing that?

A Well, I believe it is flawed because it fails to recognize the dependence of the concessionaires on the presence of the airlines.

Q Is there anything of a quantitative nature that you can cite that demonstrates the situation?

A Well, to sort of strike home in my own mind on that, I usually find relationships between revenues and costs to see whether they pass what accountants sometimes call the smell test. And in this case the car rental revenue area showed us a revenue of something like, for 1987, \$678,000, and the costs allocated to the generation of that revenue were \$28,000, giving a margin of \$650,000, which is 95 percent of sales. I find immediately the red flags go up and say any sub-unit, any segment of an overall facility that has a revenue margin, a margin on revenue 95 percent of sales, there's got to be

something going on here that is being overlooked. And so, in my opinion, that measure of performance is faulty because the full interactions or relations or dependence of the rental car operations is not included in cost allocation.

Q How about the parking lot? It's treated as a stand-alone [476] revenue producing cost center. Can you give us your opinion of the way it is handled in the rate study and the allocation of costs to the parking lot?

A Yes. My opinion is similar to the one that I just expressed with respect to the rental car concessionaires. That is, the parking lot is a part of an integrated airport facility, and the cost allocations should recognize that in evaluating performance.

In this case the revenue of the parking lot for '87 was over \$1,600,000, and the costs allocated to it were 688 or something like that, to give a margin of \$925,000 on sales of a million six. That is a very, very tidy margin, and immediately, again, I look at the situation and say the economic factors that are playing around here haven't been recognized to the extent that they should.

Q I call to your attention the rate study, and I call to your attention the particular line—the rate study is Exhibit 6, and turn to Exhibit 7 of Exhibit 6, Page 2 of 4.

A I have it.

Q I notice there's a terminal building addition, which is the line—I believe it's C-63, and that is the F line under Passenger Terminal Building on Page 2 of 4 of Exhibit 7 of Exhibit 6, the very item Mr. Hunting, counsel for the airport, picked yesterday to demonstrate how their system works, and I ask you what the net for rate base is.

[477] A That is in Column 5, and it is \$3,174,000.

Q What is the yearly average charge that is made by the rate study for the terminal building addition costing 3—that is in the rate base at \$3,174,000?

A Well, that's in the final column, and it's \$311,600.

Q In ten years, how much of the cost will be recovered from the users of the terminal through the Buckley methodology, or the rate study, as I should call it?

A How much of the cost? Well, in ten years, if you multiply the ten times the three million—or, excuse me, the \$311,600, in ten years it will recover the rate base cost.

Q For how many years will the—for how long will the rate study keep that terminal building addition? Will it continue to charge for the terminal building addition?

A It will continue to charge for the addition over the useful life as planned in the schedule, which would be 360 months or 30 years.

Q Would you take another look? I think that may be 340.

A Excuse me, 340.

Q So it's not quite 30 years; is that correct?

A Not quite 30 years.

Q And during that not quite 30 years, how many times the original amount in the rate base, approximately, will this system charge out to the users?

A Well, if you multiply 30 times the \$311,600, you get [478] \$9,300,000. Rounding, \$9,300,000.

Q Assuming, since it's a couple years short of 30, I would assume, then, we're in the \$9 million range?

A Yes.

Q So the net for rate base, which is the original cost minus the federal investment, is \$3,176,000, and the recovery over a 30-year period will be \$9 million; is that correct?

A That's correct.

Q Do you consider that to be an appropriate way of charging out the cost for that terminal expansion?

A That's a method of pricing where you mark up cost. That's what the carrying charge does. It is a markup on historical costs. For whatever justification that might be offered, it is a markup on historical cost. If you do it the way accountants account for historical cost, you would



take the \$3,174,000, and on a straight line depreciation basis there are two aspects to it. First, you deduct the residual value. In other words, if you buy an asset for \$3 million, say, 30 years from now it's still going to be worth something—

MR. HUNTING: I'm going to object, Your Honor. There's no testimony that the airport has residual value. Quite to the contrary, I think that the evidence, if we get into this kind of issue, would indicate quite to the contrary.

BY MR. MALLETTE:

Q Well, to simplify things, assume the terminal building [479] will be rubble or vaporize at the end of the 30-year period.

A And that, of course, is an assumption in favor of a higher expense per year than if you assumed that there was a residual value. So let's assume there is rubble, so there's no residual value. Then you'd take the \$3,174,000 and you'd divide it by the 30 years to get a depreciation expense, this is the way the accountants do it, per year of \$105,800 if you use a full 30 years. In other words, it's roughly \$100,000 a year.

Q So they're charging roughly three hundred instead of a hundred thousand which they would charge if they followed depreciation; is that correct?

A That is correct.

Q And that is then charged out to the users in the terminal; is that correct?

A That's correct.

Q When the charges in the terminal are underallocated to the concessions by their rate methodology, what is the effect on the charges allocated to the airlines?

A The airlines are then overallocated costs.

Q Does it work the same way with respect to the parking lot?

A Yes.

\* \* \* \*

[511] Q And, of course, I take it you recognize that the doctrine of dependencies or interdependencies is a little bit easier to look at in a hub airport as it might relate to what the passengers are doing in the airport, because in a hub airport many of those passengers never get out in the community and don't come from the community?

A Well, that's true. The passenger flow is different in a hub airport than in a non-hub airport.

Q And what would you call a non-hub airport in airport parlance?

A Well, I don't hold myself out as an expert in airport parlance. I'd call it a non-hub airport.

Q Have you heard the phrase O & D?

A Undoubtedly I've heard a lot of acronyms, and they stick with me for a few seconds sometimes and then I have to be reminded again as to what they mean.

Q Well, let's try to make this simple. Would you agree from what you know about the Kent County International Airport that for the most part it is origin and destination traffic, and not many people end up in the Kent County International Airport in the terminal building because they're midway between a trip that they're taking between point A and point [512] B?

A That's my understanding.

Q So there would be a greater likelihood, would there not, in an airport such as the Kent County International Airport, which is not a hub airport, that the people coming into Grand Rapids have some direct connection to the community that they're coming to?

A Yes.

Q And that connection could be business, social, personal, recreational, family, whatever?

A Yes.

Q And people don't fly today with the cost of flying from point A to point B just to take a joyride like teenagers may go to the mall; am I correct?

A Yes.

Q And the desire of people to travel from point A to point B is ancient, is it not?

A Yes.

Q And it certainly predates planes?

A Yes.

Q And it predates any mechanized mode of travel, does it not?

A Yes.

Q And I were to guess if we could go back far enough that the first means of travel was probably walking and there [513] wasn't any common carrier for hire you could use?

A Yes.

Q And we could go through the whole litany of history up to the time where we now have airplanes?

A Yes.

Q And previously trains were a mode of travel?

A Yes.

Q And the Federal Government has been very active in one way or another in trying to provide funds to the infant industries at different periods of time in U.S. history as it relates to the transportation industry?

A Well, certainly with respect to airport building, yes.

Q With reference to this cushion for the airport that you regarded as handsome, have you made any assumptions whatsoever about the continued availability of federal funds for expansion?

A No.

MR. MALLETTE: Object. I believe we have to take the law as it is, and I don't think we factor in the possibility Congress might change it.

BY MR. HUNTING:

Q Let me ask it this way, because Mr. Mallette made a good point, Mr. Horngren. We don't know whether the law will change or not, do we?

A No.

[521] Q In indicating that the airport would have a handsome cushion, I take it you were suggesting a cushion for the future?

A For continuing to operate the airport in a—to fulfill its operating needs, yes.

Q And did you study the past operating needs?

A Yes, in the sense that there was a revenue in excess of the operating expenses and an asset fund, the restricted assets that had accumulated to \$9 million.

Q Do you recall how those were earmarked as it relates to future projects?

A They were earmarked or subdivided for various reserves, yes.

Q And did you study the FAA approved list of projects attached to the affidavit of Mr. Dean Nitz of the FAA as filed in this matter early in 1989?

MR. MALLETTE: Objection. The affidavit stated specifically the FAA had not approved funding for any of the projects.

THE COURT: That's not the question. Overruled. You may answer.

THE WITNESS: No.

BY MR. HUNTING:

Q Have you looked at any current FAA list of projects that [522] Mr. Nitz will sponsor by his testimony here in this case if we can't reach a stipulation on it?

A No.

Q Have you looked at any airport recent or current listing of construction projects as it might relate to your view of what would be a handsome or ample cushion for this airport in approaching its future?

A I did see, I think it was a part of the Defendant's exhibits, a list of planned expenditures. I did not, however, see a list of approved planned expenditures. I viewed it as consisting, as far as I can recollect, mostly of wishes, not approved projects.

Q How would you know they're wishes if you don't relate it to FAA file information?



A Well, the thing that as an accountant convinces me the most is if there is an approved project that is going to be launched in the foreseeable future, and anything beyond that are a bunch of hopes and expectations.

\* \* \* \*

[535] Q Okay. Let's take a little basic course in economics, and I probably shouldn't do this with you, sir, but let's assume with our airport that we've got ten planes that come in every day, and they're full, and that takes care of the current need in the community in terms of flying in and out. Are you with me?

A Yes.

Q What if the airlines all of a sudden bring 30 planes the next day into the airport? Are those planes going to be full, either coming or going?

A The next day? Probably not.

Q Why not?

A Probably because the passenger flow is not sufficient to fill the 30 airplanes.

Q The community base is not sufficient to fill the second 20 planes; correct?

A Well, that may be an exaggeration, but I accept the substance of what you said, yes.

Q And the substance of what I said is known as derived or [536] primary demand, is it not?

A Yes.

Q And in just simple economics, it basically means that there is a certain volume of demand in a given pre-existing situation, in this case desire of people to travel, and the fact that the airlines may triple their planes coming in doesn't mean that all of a sudden you've got a triple need or a triple demand in the community. Am I correct?

A That's correct.

Q Doesn't that indicate that somehow or other the planes coming into a community relates to the community needs?

A Yes. Planes come into the community to serve a particular area in relation to another area; throughout the world, perhaps, in some certain cases.

Q And the airport is there also to serve the people in the community?

A Well, of course it's there to serve the people in the community.

\* \* \* \*

[541] Q Does that kind of significant percentage come into play at all if someone were to theorize whether, if you reduce the charges at the Grand Rapids airport, it'll mean the public gets cheaper tickets?

A Well, if you look again at the grand total for passengers in, say, the whole American airline system, the answer is the less costs that the airlines bear, in total the likelihood of less charge per passenger goes up.

\* \* \* \*

[542] Q I almost hate to ask this question, but I think I have to. It's unclear to me whether you are or are not applying concepts of by-product, joint product, and transfer pricing as it relates to your current testimony in this case. Are you or are you not?

A I am not in the following sense. The term by-product method, and I emphasize that whenever I talk about by-product, I use the term "by-product method" as an analogy, and I always try, at least, to say we're talking about for pricing purposes here. Costs per se are used in monopoly situations and in government contracting situations as a basis for establishing a price. You look at costs as a jump-off place to then negotiate what a fair price is, and I did not use by-product here because I did not want to—by-product method here because I don't think it's necessary to get to the essence of the matter. The essence of the matter is an integrated airport facility, and you can talk about it without dragging in all of those terms that seem to cause a lot of people a lot of trouble.

Q In fact, I think you called it fog, as I recall the word that you used in your deposition. Am I correct?

A I may have used that. I don't like fog. I prefer a clear [543] day without snow.

Q Do you remember, Page 200, that you volunteered in your own words that getting into some of these things that were difficult and technical like by-product, joint product, and transfer price was like getting into a fog?

A I may have expressed it that way, yes.

Q You may help me quicken the pace here, which would please me to no end. Then I assume that if by-product theory is not involved, that obviously joint product theory is not involved?

A I don't think it's necessary to analyze this case, no.

Q And can we rule out transfer price, too, so I can set aside files on that third category?

A Given my analysis of the case, we can set that aside. If you want to explore it, I will, but again, I don't think that it clarifies matters from my point of view. But I'm not hesitant to talk about it if you want to.

Q I don't want to talk about it unless you feel that you or Mr. Dompke are saying it's part of the case. And as I understand your testimony, you feel comfortable without relying upon by-product, joint product, and transfer price considerations. Am I correct?

A I stand by my direct testimony, yes.

\* \* \* \*

[544] And as a matter of fact, the word "by-service" or "joint service" doesn't even appear in any of the glossaries of any of your textbooks; am I correct?

A That's correct.

Q And the word "interdependencies" doesn't appear in the glossary of any of your textbooks, either, does it?

A That's correct.

Q Have you ever seen any effort or study to specifically try and quantify the flow of passengers through an airport as it might relate to which ones use some services, which use none, and which might use all of them?

A In the Grand Rapids case, are you talking about, or in general?

Q Well, let's talk about the Grand Rapids case.

A I don't recall. I may have seen such an analysis, but I don't recall seeing it.

Q Have you seen such an analysis elsewhere?

A I, again, may have seen one, but I don't recall.

Q I take it that there must be some people who come to an airport and buy nothing?

A Yes.

Q And I would guess there's probably nobody that comes to an [545] airport and buys everything?

A Yes.

Q Have you in particular reviewed any of the following pages of depositions of airline agents in this case regarding interdependency or dependency theory: John Sorenson, Page 147; Mark Fischer, Pages 21 and 22; Carolyn Lowe, Pages 117 to 118 and 54 to 57; Dan Hindes, Pages 15 to 17, 30, 51 and 52; Paul Hegedus of Comair, Pages 18 and 19; Jerome Barnack, Pages 10 to 22, 97 to 115?

A No.

Q Have you ever drafted an airport lease?

A No.

Q Have you ever seen an airport lease that contains a definition of dependency or interdependency in any sense in which you've used it here?

A I don't recall seeing those terms used in any lease.

Q Did you make any study whatsoever in an effort to quantify or compare any risk the community may have had with reference to the airport compared to any risk that the airlines have had with reference to the airport?

A No.

Q I take it you're aware that any one airline can basically leave the airport whenever they want and have very little forfeiture under the lease terms except perhaps



for what their undepreciated capital facilities might be that can't be moved?

[546] A Yes.

Q And any airline could, if they want, whether they're under a lease or not under a lease, cut all their flights back to one and still have the privilege of using all airport facilities?

A Yes.

\* \* \* \*

Q As I understand it from your deposition, the Buckley methodology in theory and as applied does not violate the Cost Accounting Standard Board's rules; am I right?

A Well, I did not match the Cost Accounting Standard Board rules against the Buckley principles, mainly because I thought it wasn't relevant since the CASB rules do not apply to airports.

Q So, obviously, there's no violation if they don't apply. Can we agree on that?

A Given your—the way you phrased it, I agree.

[547] Q And you told me at your deposition that you were not aware of any violation of GAAP, meaning generally accepted accounting principles; am I correct?

MR. MALLETTE: I'll object. I think he has to specify GAAP with respect to what document.

BY MR. HUNTING:

Q Let's take the rate study and its implementation. Do you recall indicating in your deposition that you felt there was no violation of the generally accepted accounting principles?

A With respect to the rate study, since GAAP does not apply to a rate study, I agree.

Q So to simplify this, neither CASB or GAAP apply; correct?

A Correct.

Q Have you studied any publication of Moody's on any issue in this case?

A No.

Q Moody's does deal with public entities in general, does it not, in terms of credit rating, reports, status alerts and so forth?

A Yes.

Q Do you know in fact whether it does deal with airports in particular?

A Well, since I didn't study Moody's in connection with this case, I can't answer that question with authority. I would assume that it does, but that's just an assumption.

\* \* \* \*

[548] Q So wouldn't that indicate that somehow in the last ten years there must be something pretty good going on in Grand Rapids to cause all of these commercial airlines to want to have a presence here?

A I would assume that the economy must have been good enough to attract them, yes.

Q And that's just basic market economics, is it not?

A Yes.

Q And if they perceive the economy to become static or if they foresee the economy will turn sour, they can leave?

A They certainly can, yes.

\* \* \* \*

[551] Q So at least to that extent. Buckley's treatment of the non-aeronautical revenues is the American way?

A It is the American way in the sense that the management then has in a unique facility the ability to chop it up and run profit-making enterprises side-by-side with nonprofit-making monopoly enterprises and ignore the integrated facility.

Q Is your opinion to any extent in this case based upon conclusions as to monopoly?

A It's based on the conclusion that there is a natural monopoly, that an airfield that's doing commercial service is a natural monopoly.

Q You used the word "chop up." Realistically, the Buckley methodology for 20 years has chopped up or created separate, distinct, well-described explicit cost areas, has it not?

A Yes.

Q And the cost areas as described and implemented have remained the same for 20 years, have they not?

A Yes.

Q I would have to assume that if you took the airport at any instant in time and you took a cross-section of it, there would be probably some arbitrariness or some unfairness in some part of a cost allocation at an instant in time almost by definition. Am I correct?

A Correct.

\* \* \* \*

[557] Q Now, what would prevent general aviation, recognizing that they don't put as many people through the terminal, from coming in and saying the same thing to the extent they have some smaller contribution to the flow of passengers?

A I can't—I haven't looked at it from a general aviation point of view. As I've said before, what I'm looking at is the total picture and the fact that the airlines are being affected as a buyer of airport services by the financial impact of a pricing plan that the airport runs, and it looks like from all of the tests we've run that the cash position plus the cash generating power is excessive. And therefore, they have a complaint because the price is excessive of services that they're buying from a monopoly.

\* \* \* \*

[573] Q And of course, in government contract situations the government has its own policing and auditing powers and policing and so forth?

A Correct.

Q And in this instance the FAA under grant assurances could look at the reasonableness of these rates and charges, do you know?

A I don't under—I'm not aware of the mechanisms that the FAA has to determine reasonableness of rates and charges. Since I don't know the facts, I can't really offer an informative answer to that question.

Q Have you looked at the airport user flow chart that Mr. Dompke marked Exhibit 303?

A Yes.

Q Is that technically a by-product split-off point chart or not?

A I don't look at an airport as a by-product split-off situation for reasons that we've already discussed. All it [574] does is blow fog or blizzard into the analysis.

Q Did that happen in Indianapolis?

A No. As I said before, I used a by-product method. I did not talk—I looked over my deposition and testimony in there, and I don't think I called anything a by-product or a joint product. I talked about by-product methods and joint product methods, and I think used by-products and joint products as analogies in trying to get a fix on what was going on in Indianapolis.

Q Specifically, is Mr. Dompke's chart, Exhibit 303, in your opinion a by-product split-off point chart or not?

A No.

Q As I understand it, the affidavit that you filed in this case, you relied upon the figures of Mr. Dompke?

A I relied on the figures of Mr. Dompke, but at that time I checked every figure line by line back to the sources.

Q I'd like to ask you a couple quick questions about Indianapolis. First, Indianapolis was switching from a residual methodology to a compensatory methodology, was it not, when it adopted the fees that became disputed in litigation?

A Yes, to the best of my recollection, that's correct.

Q So simply speaking, it was the airport in the Indianapolis case that was changing the status quo or the



equilibrium or the entire type of relationship that I've depicted on the [575] blackboard?

A That's correct.

Q And prior to the time that the Indianapolis Airport sought to make that change, the airlines in one fashion or another had already had access to or some share of the non-aeronautical or the concession revenues, had they not?

A I wouldn't express it in that manner. The substance of what you say, I accept for responding, and my answer is yes.

Q So whatever it was in substance that the airlines had at Indianapolis before the disputed rates, the new compensatory approach of the Indianapolis Airport Authority was designed to take that away?

A Well, "take that away" is one way of expressing it. It certainly changed the method for setting rates.

Q You'll recall our discussion at your deposition in which you and I shared the same concern about a seller attempting to have legal standing to speak for the interests of a buyer?

A Yes.

Q And the example I used in your deposition was the same one I used in court today involving General Motors as a seller and the public as a buyer and the safety interest in recalls?

A Yes.

Q And we both agreed we would be troubled by having the seller in that kind of setting attempt to speak for the buyer?

A That's correct.

[576] Q And typically the seller and the buyer in most business situations where money passes between them have inconsistent interests?

A Correct.

\* \* \* \*

[578] Q The next page, you indicate that as an author you had spent, quote, "much time interacting with the business community to determine new uses of cost ac-

counting data, and to gain insight into how changes in technology are affecting the role of cost accounting information" in the middle of the page marked Roman numeral XX; am I correct?

A Correct.

Q And it's my understanding that as to your testimony in this case regarding cost accounting implementation, you did not discuss that with any airport property managing agent or any airport manager; am I correct?

A Correct.

\* \* \* \*

[588] Q Do you recall using the word due process?

A Yes.

[589] Q And you used it in the context of the questions that I had asked of you when I had used the phrase built-in protection in the framework within which the cost foundation of the airport is established and rates are developed. Do you recall that?

A Yes.

Q And you agreed with me that there was some due process in this procedure that involved the removal of federal funds, the removal of state money, the ability of the airlines to leave, the fact that major contracts would be subject to public hearings and scrutiny, that there was public bidding on those contracts, and that the cost was a local historic cost. Do you recall those series of questions in your deposition?

A Yes, I do.

Q And you indicated in your deposition, did you not, that in your opinion that constituted some form of due process?

A Yes.

\* \* \* \*

[592] [A] Moreover, you can reverse that theory and say the chain continues because if the airlines are present, the presence of the concessionaires is dependent on the presence of the airlines. And therefore, you can say that the concessionaires' demand for service from the airport

is derived from the presence of the airlines. If the airlines weren't there, there would be no concessionaires there.

\* \* \* \*

# **TRIAL TESTIMONY OF DEAN NITZ**

\* \* \* \*

[631] Q Sir, does the Federal Aviation Administration develop a comprehensive national plan for the development of airports across the country?

A Yes, we do.

Q What is that called, sir?

A It's called the National Plan of Integrated Airport Systems.

Q Okay. Sir, why does the FAA develop such a plan?

A Well, the plan is to attempt to identify the needs of the—of development to meet the forecasted demand, and it's used as a tool both by the Federal Aviation Administration and by the Congress in development of budgets to support that kind of development.

Q Sir, does it deal with short- and long-range development?

A Yes, it covers a period of ten years.

\* \* \* \*

Q The Plaintiffs in this action have represented to this [632] Court, and I quote, that Kent County International Airport is, quote, "primarily a general aviation airport with some commercial air carrier service." Sir, could you please tell the Court how the Kent County International Airport is designated under the national plan?

A Kent County International Airport is designated as a primary commercial service airport.

Q Sir, based on your experience, can you give me an opinion as to the quote that I just gave you from the Plaintiffs' brief?

A I think identifying it as primarily a general aviation airport is very subjective and not an accurate picture

of Kent County International Airport. I would think that the major costs of acquisition and development of this facility have been primarily for meeting the demands of commercial service.

\* \* \* \*

[637] Q No. What I'd like you to do is to tell us the process by which an event—excuse me, a project is listed on that list.

A Well, on an annual basis we review the National Plan of Integrated Airport Systems for each airport in the system. We will identify, as I said previously, development that has been perhaps shown on the master plan and we have reason to believe that the sponsor is going to proceed with; other information from the state system plan; and, from our own experience and knowledge and our familiarity with the airport, we develop a plan and have it staged here to show the needs of that community and that airport. That is submitted to me, and if it meets with the expected forecast, it will be approved, and it is then submitted to our regional office in Chicago and out into our national office. And every two years the federal government publishes a report called a National Plan of Integrated Systems whereby these costs are all incorporated into that plan.

\* \* \* \*

[638] Q Sir, looking at Page 2 of DA-35A, can you please identify for me the total of the one- to five-year cost of projects at this point?

A The total cost for the one- to five-year time frame is \$19,590,000.

[639] Q And, sir, that's the total cost of the entire projects; is that correct?

A Yes. That includes engineering costs and contingencies for that item.

Q And it includes local share and federal share of projects?

A Yes.



Q Can you please tell me the total of the six- to ten-year compilation on Page 3 of DA-35A?

A The total for the six- to ten-year time frame is \$20,670,000.

Q And can you give me the grand total on Page 3 of DA-35A?

A The grand total is \$40,260,000.

Q Of that \$40 million total, we discussed that some will be local share and some will be grant money. Can you give me an idea of the types or the percentages of grants that would be available for the projects listed on Pages 2 and 3 of this exhibit?

A Generally, the federal share of this type of development would be 90 percent, except for terminal development, which would be eligible at the rate of 75 percent.

\* \* \* \*

[640] Q Is it possible that Kent County International Airport would have other projects that they would be working on that would not be eligible for FAA funding?

A Yes, there are certain items. Parking lots are not eligible for federal funding, and non-public areas of the terminal are not eligible for federal funding.

Q When you say "non-public", are you talking about revenue producing areas?

[641] A Yes. Any area that generates revenue is not eligible for federal funding.

Q And any projects that fit into any of those two categories you just talked about as non-funded areas, such as the parking lot area, as far as the FAA is concerned, they could be undertaken by the Kent County International Airport; is that correct?

A Absolutely.

Q But they would have to seek other sources of funding for those projects; is that correct?

A That's correct.

Q Would you consider the construction of an air cargo facility being a revenue producing area, sir?

A Certain portions of that type of complex would be eligible if the complex is serving more than one tenant and a tenant does not have exclusive rights to it. The apron and a taxiway leading to that complex would be eligible for federal assistance.

Q But the portions that do not have those kind of grants do not appear on this list; is that correct?

A That's correct.

\* \* \* \*

[642] Q Sir, can you describe to me what grant assurances are?

A Grant assurances basically summarize the obligations of the sponsor, promises to fulfill as a result of receiving the federal assistance.

Q Are all grants conditioned upon the grant assurances?

A Every grant must have a copy of these assurances attached to it. In fact, the sponsor in this case, Kent County, would be required to submit these assurances with their application [643] for federal funding.

Q And sir, this is a document that is substantially similar to documents that you have in your office; is that correct?

A Yes, it is.

Q And in fact this document is the grant assurances being utilized by the FAA nationally for purposes of grant assurances during fiscal year 1990; is that correct?

A That's correct.

Q So basically, any grant during that fiscal year will be conditioned upon the agreement of the sponsor of the airport to agree to abide by the conditions of these grant assurances. Is that correct?

A Yes.

Q And in fact, any grants made to Kent County International Airport are going to be conditioned upon the grant assurances, either these or earlier grant assurances that are substantially similar to this; is that correct?

A Yes. This particular assurance is dated October 1, 1989, and as Congress passes additional laws, these assurances are changed from time to time. So the previous grants that we issued to Kent County do have assurances of this type, but may not contain the exact language as this one we have here for FY '90.

Q Are they basically—fiscal year '90?

A Fiscal year '90, yes.

[644] Q Are they basically updated on an annual basis, sir?

A In recent history they have been, yes.

\* \* \* \*

Q Sir, if you can go back to DA-35A, I'm going to refer you to Page 2 of that document. I want to make sure I understand, how this works. If Kent County International Airport has sponsored a project on Page 2 of the document, came to the Federal Aviation Administration with a request or an application, I think you called it, for any of the projects on Page 2, they would then produce to you the application and an agreement by which they would agree to abide by the terms and conditions of the grant assurances. Is that correct?

A Yes.

Q And if the grant were approved—is that the correct term?

A Um-hum.

Q If the grant were approved, then Kent County International Airport would receive the federal funds as well as the obligation to abide by the grant assurances?

A Yes.

\* \* \* \*

#### TRIAL TESTIMONY OF ROBERT M. ROSS

\* \* \* \*

[667] Q Let's try to get to the '80s, Mr. Ross. Would you indicate in this late 1960s, early 1970s program the utilities and the sewer and water activities that took place as it related to the airport?

A Yes. The continuing programs of the \$8.3 million in revenue bond funds went on to the bringing of the sewer and water into the airport. Prior to this time we had been utilizing well water, and we had an aeration pond system for a sewage system on the field. So new City of Grand Rapids water was brought into the airport, and the sewer system as well.

We built some car rental service areas at this particular time. We built additional carousels, or really new [668] carousels, the first time we used them in the ticket wing of the terminal building, and made a major construction underneath the building to develop what we call a tug-way where the baggage carts would come in, go underground, the baggage would be put on the conveyor and brought up to the carousels in the ticket wing section of the building.

In all of these projects we were very fortunate in that shortly after, a year after we sold the revenue bonds and had the funds for this additional development, and many of the items were state-requested, the Federal Airways and Airport Act came into existence in nineteen hundred and seventy, and this was the first time the airports had a trust fund from which construction funds could be taken based on enplanements and entitlements. So we were able to add to our \$8.3 million in this program with many of these projects that I mentioned, which went on from 1969 to 1974, \$6 million in addition of federal funds under the AIP program, making basically a total of project funds during that five-year period of \$14 million.

Q And the five-year period would be roughly late '60s into '73 or '74?

A '69 to '74.

Q Quickly tell me what, if anything, happened to the hotel and to FBO facilities and freight building activities in that time frame?

A Those were additional projects in this overall program. [669] We did expand the hotel with another 30 rooms, 35 rooms. We did build a 12,000-square-foot air



freight terminal building, and I mentioned these other projects as well, all during that particular period.

Q What about Centurion? When did they come into existence?

A Yes, that was our second fixed-base operator, so-called, and actually their hangar, major fixed-base operator hangar was built also in this period.

Q Now, what extent did that source of money deal with the parking lot and ramps and the runways?

A Yes, the parking lots were also expanded. I think we expanded the parking lot for an additional 1,000 vehicles, and I think I mentioned earlier before lunch that we overlaid the runway in that particular project as well in order to give us the strength to take the new jet aircraft.

Q And what about taxiways?

A We did build some additional taxiways because we, as I mentioned, we had extended the runway an additional 1,000 feet in the program. So there had to be a connecting taxiway to be built as well.

Q And can you give me some brief idea of how taxiways and runways interrelate generally before we have you provide a description of this exhibit later on?

A Yes. Basically the taxiways provide the access and egress from the operating runways in order to allow the aircraft to [670] proceed from the runway and to the aircraft ramps or the general aviation ramps.

Q As I understand it, the particular program you described involved bond issue money, and then later on also involved the availability of federal funds?

A That's correct.

Q At this point would you give me some kind of brief categorization of the types of projects you have, the way in which projects may develop, and the sources of funds or the sources of approval for the different types of projects that airports have, doing it in a general way, if you will, first?

A Yes. Well, of course, it starts locally with our own department, and then the Aeronautics Board, our staff develops and recommends these particular projects, and they very frequently have developed out of needs of our tenants, the airlines, general aviation cargo people as well. Those also would have been included in the master plan and application, and then if they are eligible, application is made to the FAA for participating funds. A number of the activities certainly do not require or are not eligible for federal funds and would have to be built completely out of local funds. That's an activity between the Aeronautics Department and the Aeronautics Board, and the Board can approve those non-federal projects within their own operation.

Q Are there times when there are overlapping of these [671] projects in the sense you may have something under consideration, but you're not sure whether you will get federal or state money or have available local money?

A Yes. The process does take time when we make application for federal funds, and there's always a period there in which we're not sure whether we can go ahead with a project or not until we get actual grant approval.

Q Are there any major projects for which federal funds might become available that do not involve some type of public hearing?

A I can't think of anything offhand.

Q I think we've gotten—

A Yes, excuse me, I do. We did have a project. It was a national program for increasing employment and affected highways and airports as well, and we were requested to make a determination of a project that we had in our master plan that was fairly simple to accomplish and would involve a lot of labor. We had an expansion of our east ramp which we felt fell into that category, and that was—there was no public hearing on it. It was in accordance with our master plan and it didn't have any environmental problems or anything of that sort in it. It was purely the FAA's approval for the issuance of the

grant and, of course, the initial approval of the airport board.

Q Can I assume that typically while you have been director [672] of the airport, that you have attempted to seek out whatever funds may be available for the projects that you have under consideration?

A Yes. We try to take advantage of every possible federal aid program that we are eligible for.

\* \* \* \*

[718] Q Calling your attention to DA-35A, am I correct that no grant applications have been made by the Board to the FAA for any of those projects? I believe your counsel's handing you a copy. You might take a look if you don't know.

A Okay. What was your question again, Mr. Mallette?

Q Yes. Have any grant applications been made for any of those items?

A No, I don't believe so.

Q Have any of them been approved for construction by the Board?

A No, they have not.

Q Am I correct that the only fee paid by locally based general aviation aircraft for use of the runways and taxiways is the fifty-cent landing fee?

A Fifty-cent landing fee?

Q I'm sorry, fifty-cent—I made a mistake. Is the only fee paid by general aviation aircraft for use of the runways and the taxiways the four cents per gallon fuel flowage fee?

A Yes.

Q I hand you Plaintiffs' Exhibit 20, Rental Fee Recommendations of James C. Buckley, and I call to your attention page Roman numeral III-5, which is Bates number at the bottom 001869.

A Yes, I have it.

[719] Q And I'll ask you if for the three years beginning January 1, 1968, Mr. Buckley recommended that the fuel flowage fee to general aviation be increased by approximately 12 percent?

A Yes.

Q And did you follow Mr.—did the Board follow Mr. Buckley's recommendation?

A No.

Q And what was the fuel flowage fee when the airport was opened in 1963?

A Three cents a gallon.

Q I'm sorry. I misspoke about the four-cent rate. Is the current fuel flowage fee to general aviation, locally based, for use of the runways and taxiways three cents per gallon?

A Current?

Q Yes.

A Current is four cents a gallon.

Q I see. When did you go from three to four?

A Approximately four years after we opened the airport.

Q So since 1967 it has been at four cents a gallon; is that correct?

A That's correct.

Q I hand you Plaintiffs' Exhibit 25 and ask you if that isn't a letter from S. LeRoy, Manager of Properties of United Airlines, to you dated June 25, 1987?

A Yes, that's what it appears to be.

[720] Q And am I correct that when I handed you that letter at your deposition, you told me it looks like it could have been written last week?

A Perhaps. I don't recall, Mr. Mallette.

Q Isn't it true that from 1970 to the present, you and the Board have known that the airline industry does not agree with the Buckley methodology?

A Yes, I think that's been common knowledge in the industry.



Q Isn't it true that none of the leases or agreements between the airlines and the Board contain any provision that the airlines agreed to the Buckley methodology?

A No.

Q That is not true?

A No. There's no—there's nothing in the leases to that effect.

Q That is, there is nothing in the leases to the effect that the airlines agree to the Buckley methodology; right?

A That's right.

Q And there's never been anything to that effect in any of the leases in the past; is that correct?

A That's correct.

Q Isn't it true that no representative of any of the airlines has ever stated to you or to the Board that they agree with the Buckley methodology as implemented at this airport?

[721] A I think I did state that a Mr. Longley had discussed this with me, and he had indicated there were some merits to the methodology.

Q Other than Mr. Longley stating there were some merits, has any representative of any of the airlines ever stated to you or the Board that they agreed with the Buckley methodology as implemented at this airport?

A No.

\* \* \* \*

[739] Q Exactly what does the fuel flowage fee cover from the airport's perspective? In other words, what rights does it give?

A I guess it can be interpreted as a landing fee for the local-based aircraft.

\* \* \* \*

#### TRIAL TESTIMONY OF HAROLD PEDERSON

\* \* \* \*

[757] Q And specifically the purpose of that particular apron expansion, if it takes place, is to accommodate additional commercial airplanes?

A Yes, to give us additional gate positions so we can handle more aircraft on the ground at the same time.

Q And the particular gate positions are on the other side of an already existing concourse?

A Yes. What we'll be doing is utilizing the concourse so we can serve both the north side and the south side. Right now we're just serving all aircraft on the south side.

Q And that's the right side as you walk out there?

A That's correct. That's where United and USAir is located, and Comair is in the same location. Excuse me, not Comair, but Continental Express.

Q And in your experience at other airports, is it typical to have access to both sides of a concourse in terms of gates?

A Yes, that's a very typical construction. You can still utilize the same corridor to serve gates on both sides, yes.

Q Continue on with the next one, please.

A Number 8 is we feel that probably in the next ten years that we'll probably have to have centerline and touchdown lights on the main instrument runway. What this is is an anticipation that FAA would bring in Category 2 ILS systems. The present—

Q You better describe those.

[758] A Yes. We have an instrument landing system that pilots use to guide themselves in to the runway. At the present time we're at what we call Category 1 ILS, and this gives us minimums of approximately 200-foot ceilings and half-mile visibility, we are available to land at the airport. With the installation of a Category 2 instrument landing system—this equipment, by the way, would be furnished by the FAA, but to make this system effective, you have to have centerline lights down the center of the runway plus touchdown lights, they call it, right in the pavement. And with that system installed, you can reduce the minimums to some 100-foot ceilings and a quarter-mile visibility. So what it would do, it

would give the airport more reliability for getting aircraft in and getting aircraft out.

Q Item 10, Page 2 of that exhibit, would you describe what that entails, please?

A Yes. Under our current master plan study, we are performing a Wildlife Management Program. The reason this study was required is that under our certification we had an inspector as one of his last inspections said that we should do a wildlife management study because we had several reported deer strikes on the airport, and we're supposed to have the study performed so that we can come up with some way or hopefully the study will show ways that we can mitigate that problem of deer strikes and bird strikes. The dollar amount [759] you see in there is what we feel would be an estimate to implement the study when it's complete. We don't know exactly what's going to be involved, but I've heard in talking to all of the people involved with wildlife management that the way you get rid of potential deer strikes is to get rid of the habitat. So this money was in there to try to eliminate some of the swamp areas near the runways and also to cut down about 50 or probably 60 acres of woods to eliminate the habitat.

Q And did the FAA in particular request that the airport consider such an approach or at least look at that type problem?

A They put it on their last inspection that we had to do it. It's part of their inspection report.

Q Item 11-E, would you just briefly indicate what that is?

A Excuse me. What item?

Q Item 11-E.

A Oh, yes. Those are land acquisitions that we feel will be necessary. This Esraugh property is an eight-acre parcel that's now within our clear zone trapezoid to the approach to Runway 26 Left, and we're attempting to negotiate or talk to the gentleman to see if we could buy

that piece of property in fee so we could protect that clear zone.

This Basset property is a piece of property located at the corner of 48th Street and Kraft Avenue, and this particular property is within our 750-foot building [760] restriction line to that main instrument runway on the south side. In fact, that road, the county road is probably within about 500 feet of that runway. We do have a navigation easement over that house, but we just had to trim trees in there in order to meet the FAA standards for side clearance, and we just feel that the piece of property should be bought so that we can create better safety for the airport and get that building back to 750 feet, and this is what the purchase of that property would do.

Q And I take it at this point you're not even in a position to know what the purchase price might be?

A No, we don't. We're just in the discussion stage at this point. And this Weber property is less than a one-acre parcel south of the approach to 26 Left. We had recently purchased property in that area to protect our clear zone and we surrounded this gentleman in his house, and he's requested that we take a look at possibly buying him out rather than leaving him here on that island, so the Board Director indicated he'd get an appraisal. We have an appraisal now and we will probably begin negotiations on that one.

Q And, for instance, would this land acquisition for which you don't today know what the cost might be, be representative of a lot of things you do week in and week out in terms of starting on a project without knowing what the cost might be, but looking into it as you go along?

[761] A That's right. In this particular case we know the benefits, to protect the airport. We don't know the cost at this point, but it's something that has to be looked into.

Q Would you tell the Court what you mean by clear zone and the trapezoid area that you discussed?



A Yeah. That's the area and approach to a runway, and our particular runway there, the instrument runway starts 200 feet off the end of the runway and it's a thousand feet wide, and it goes out 2,500 feet and flares out to 1,750 feet at the end, and that's what they call the clear zone. That's the area that FAA likes to have protected in the best way possible, and the best way possible is to own it in fee. That would restrict people from building in that area so you'd have a clear approach to the airport. That's what a clear zone is.

Q While we're on zones, can you indicate what a noise zone is?

A I'm not really familiar with a noise zone. This is going to come out on this Part 150 Noise Study. This is—I'm going to learn a lot from that noise study myself.

Q Is this the first time the airport's gotten into the sophisticated noise study problem?

A That's correct. When we—this master plan, now it's required on an airport our size. I understand that to do a master plan, that you must do a 150 Noise Study to accompany the development of the airport.

[762] Q You and Mr. Ross and Mr. Nitz all used some numbers that would be something like Part 139, Part 150. Are these all—

A These are—

Q Just a second.

A Excuse me.

Q Are these all parts of the Rule 150 FAA regulations to which you're making reference?

A That's right. I guess it's FAA Part 150, Federal Aviation Administration Part 150. I'm not that familiar with the regulation, but that is the part that noise studies come under.

Q Quickly, would you go through 12 and move on down the page, giving us a description of the status of your files, your work on those particular projects?

A Yes. Number 12, we're grading now for this area along the—excuse me, I take that back. We're talking

here about item number 5 that we covered, draining and drainage along the Runway 8 Left, which I said that we've applied for a grant to do the work. It's our feeling that when that grading is complete, we are running short of space for hangar development and general aircraft parking. We feel there will be a need for 30 aircraft apron parking areas, so this is what that new G.A. ramp is in there, to go in that particular area.

The Aero-Med, I think Mr. Ross alluded to that, and I talk about that in here on the next page, Item 23. This is [763] the roads that would support the construction of a hangar for Aero-Med. That would be a road that would come off what I call our fuel drive to serve that area, and the connecting taxiways are also taxiways that would serve that hangar when it's built.

Q 13, please?

A All this is is a replacement of our airfield maintenance equipment such as mowers, our end loader we use for snow removal, replacement of pickup trucks and other snowplows that are not eligible for federal funding. We have three or four of these type trucks.

Q And this is over a ten-year period of time?

A That's correct.

Q 14, please?

A 14 is just to replace our snowplows and blowers that are eligible for federal funding, and at this time we're eligible for four large snowplows and two blowers which we purchased about three or four years ago, and I feel in the next ten-year period those items will have to be replaced, and that's what this is for.

Q So this assumes that the existing snowplows and blowers may last as long as ten years?

A We assume a ten-year life.

\* \* \* \*

[774] Q Am I correct on Exhibit 23 the items the Board has approved are 1-A through 5-B, 7-D—

A You have to go slower, please.

Q I'm sorry. 1-A through 5-B have been approved by the [775] Board; correct?

A 1-A through 5-B, that's correct.

Q I take it 6-C has not been approved by the Board?

A I guess it's been approved by principle, but as far as being approved for construction, no, it has not.

Q And it is an item that is being considered for the master plan; is that correct?

A I understand that is one of the work elements in the master plan that is under study right now.

Q And there has been no environmental hearings, there have been no public hearings as required; is that correct?

A Not to this time, no.

Q The apron expansion, which is 7-D, has that been approved by the Board?

A No, it has not.

Q Is that linked to a project that's already in progress that the Board has approved?

A No.

Q How about the centerline and touchdown, Item 8? Has that been approved by the Board?

A No.

Q I understand that you must do Item 9 and 10; is that correct?

A Yes.

Q Those are required?

[776] A Those are required under federal regulations.

Q And Item 12, I understand that has not been approved by the Board; is that correct?

A That's correct.

Q Item 13, that is a projection again and that's nothing specific; is that correct?

A Well, I guess it's specific to the point that we know we'll have to replace them. But it's not—it has not been approved by the Board, if that's what you're asking me.

Q On the hold rooms, Concourse B, Item 15, there's no Board approval on that; is that correct?

A That's correct.

Q Ticket wing to the east, there is no Board approval?

A That's correct.

Q Do you have any idea of what time period you're thinking of for that, or has anybody even thought about the time period?

A For which item is that?

Q 16.

A Within the next ten years.

Q What's your current parking lot?

A 3,300 cars.

Q I take it—has Item 17 been approved by the Board?

A No, it has not.

Q How about 18-C?

[777] A It has not.

Q I take it you know you're going to replace the shuttle buses at some time within the next ten years; is that correct?

A It's the same as replacement of airfield equipment.

Q Now, am I correct that the Federal Express Freight Building, the Emery Freight Building, and the Aero-Med Hangar, there's no contract and those are projects which the airport will lease with a lease that returns its money plus a profit; is that correct?

A I don't know about the profit part, but they'll be leased to get our money back.

Q I take it Mr. Ross would know that; is that correct?

A Yes, he might know that.

Q And the remaining projects—well, 25-F, has it been approved by the Board?

A It's been approved, but the lease has not been signed with the FAA.

Q And so that is an approved project, and the lease again will return your money with a profit; is that correct?



A I'm not sure about this term "profit." It will return our money, the investment, I believe.

Q How about the remaining projects, 26, 27, 28, 29? Have they been approved by the Board?

A No, they have not.

Q Am I correct that you have done some work with respect to [778] the creation of the rate study?

A I assisted on that.

Q By rate study I mean the last rate study, the one that was done for the three years 1987 through 1989?

A I assisted.

Q And am I correct that you don't know why the rate study separates the public parking passenger terminal cost center from the terminal building?

A I don't—I didn't quite understand that.

Q Am I correct that you don't know why the rate study separates the public parking passenger terminal from the passenger terminal building under the Buckley methodology?

A I just follow it, the methodology.

Q Am I correct if I ask you any other question about the methodology and the rationale behind it, you would tell me you simply follow it; correct?

A That's what I did. I followed Buckley's methodology.

Q Am I correct you have never inquired of anyone why the Buckley methodology refers to break-even, but you get more in the terminal than break-even?

A I've never inquired that.

Q Am I correct that the rate study includes in the runway and taxiway cost center land held for future development?

A You'll have to repeat that again, now.

Q Oh, I'm sorry. I must have spoken too fast. Am I correct [779] that the rate study includes land held for future development in the runway and taxiway cost center?

A That's correct.

\* \* \* \*

# TRIAL TESTIMONY OF DAVID GROENLEER

\* \* \* \*

[811] Q Were each of the projects identified in Exhibit DA-29 made necessary because of the development of the Kent County International Airport?

A Yes.

Q Sir, are you familiar with the area that is—the Cascade Township area that is currently occupied by the Kent County International Airport?

A Yes.

Q Were you familiar with it back in 1960?

A Yes.

Q Can you briefly describe what this area was like in 1960?

MR. MALLETTE: Your Honor, may I have a continuing objection on the grounds of relevance to all the questions from now on with respect to this Witness' testimony as to the improvements?

THE COURT: I don't—that wasn't the question, though. I think the question was to describe the area prior to the airport being built.

MR. ALLARD: Yes, the area.

MR. MALLETTE: I'll withdraw the objection.

THE COURT: But your objection may stand as to the [812] nature of these improvements and their cost—not the nature of them, but to the relevancy of the costs of improvements to any base that the airport may be building. Your objection is a standing objection to this Witness' testimony in that regard. Let's continue questioning here.

MR. ALLARD: Thank you, Your Honor.

THE WITNESS: In 1960 this area was rural agricultural.

BY MR. ALLARD:

Q Can you describe to us briefly what Patterson Road was like back in 1960?

A Patterson Avenue between 28th Street and 36th Street was a gravel road, and from 36th Street to 44th Street it was a two-lane blacktop surface treated road, which means it was tar and stone chips placed on it.

Q Are any of the roads identified—excuse me, any of the projects dealing with roads identified in Exhibit DA-29 that type of road at this time?

A No.

Q Sir, are you familiar with the late 1959-early 1960 attempt to locate the Kent County International Airport out in Marne, Michigan?

A Yes. I've lived in Kent County all my life. In fact, I was born and raised in what's now the City of Walker, which is adjacent to Marne, and I recall, you know, vividly that [813] decision process and the public information at the time, that there was an airport choice being selected, and as I recall Marne was one of the prime sources for the airport, as was the present location. Marne was a rural agricultural area at that time, as was Cascade, and Cascade now has the airport and is a booming area and Marne is still rural agricultural.

Q Sir, do you know the total cost, approximately, of these 65 projects identified in DA-29?

A Yes. Added, the total cost to these projects is about \$14.4 million.

Q Was that entire amount incurred by the Kent County Road Commission?

A No. The Road Commission's cost of that 14.4 is approximately 5.4. So there was \$9 million then spent by others.

\* \* \*

[815] Q And is this money that is being utilized for the projects identified in DA-29 money that cannot be used for other projects in the Kent County area?

A Yes. That's where the \$5.4 million would have been obtained from.

\* \* \*

# TRIAL TESTIMONY OF DAVID WAICHUM

\* \* \*

[818] Q Sir, do you know the approximate value of the general obligation bonds of September 1 of 1960?

A \$3,975,000 was the issue amount.

\* \* \*

[819] Q I'll try. See if I can do it without as many words. How was the bond issue of September 1 of 1960 to be repaid?

A The county taxpayers at an election approved the issuance of these bonds, and at the same time they also approved an additional levy of four-tenths of a mill for retirement of this debt.

Q When you say an additional levy of four-tenths of a mill, can you please describe briefly for us what that means?

A It's a dedicated millage to be used strictly for retirement of the debt.

Q And from your review of the records, are you able to identify whether or not the purpose of the bonds and the purpose of the election itself was that these bonds would be utilized for the construction of the airport in Cascade Township?

A Yes.

Q Have you reviewed the records of Kent County to determine whether or not there has ever been a repayment by the airport of that dedicated millage?

A To the best of my ability I have reviewed the records of the County, and I can find no evidence of any money coming out of the airport funds being returned to any of the general [820] county moneys.

Q Sir, are you aware of any kind of technical requirement for that money to be repaid by the airport to the County?

MR. MALLETTE: Object, asking for a conclusion again. If there's a technical requirement, it would be set forth in some document.



MR. ALLARD: Your Honor, I'll withdraw the question and ask a different question.

BY MR. ALLARD:

Q In your review of the documents, can you tell me whether or not the money has been repaid? Have you found any document indicating a requirement from the accounting side that that money had been repaid to the County?

A The original resolution passed by the Board indicated that the dedicated millage should be returned to the County from the airport funds.

Q Has the County advanced any other funds for the development of the Kent County International Airport?

[821] A Yes, they have.

Q Can you identify what those funds were and when they were advanced?

A The gross amount of the additional advance was to extend the runway, and the moneys were advanced in 1978 and 1979, in total \$1.2 million, and these were from funds that were under the control of the Board of Commissioners.

Q Sir, do you know the approximate value of the moneys collected pursuant to the dedicated millage that you referred to earlier?

A From my examination of the records, the County turned over to the airport for retirement of the debt 4,332,000-plus dollars.

Q So the total advancement of County funds for the development of Kent County International Airport was approximately \$5,532,000?

A That is correct.

\* \* \* \*

#### TRIAL TESTIMONY OF BRIAN PICARDAT

\* \* \* \*

[847] Q I'm merely going to do some computations, perhaps with your help, as I understand you're a CPA?

A I am not.

Q You are trained in accounting?

A I have a B.S. in accounting, but I'm not a CPA.

Q You're not a CPA, but you have a degree in accounting, you can certainly add; is that correct?

A That's correct.

Q No problem there. All right. What I'd like to do is under the prior rates the cash flow, according to Mr. Dompke's [848] exhibit, was about 2.177 in '88 and 2.4 in '87, and apparently somewhere between. I'm going to say that the average would be \$2.2 million. Now, if you had a cash flow of \$2.2 million, you don't know anything to dispute that, do you? You don't have any information that that number is wrong?

MR. HUNTING: Your Honor, if I might indicate, I guess we could go on for a couple more days with this. This is, number one, beyond the direct examination scope of this Witness; and it would appear to me, number two, completely repetitive of two days of Mr. Dompke or two and a half days of Mr. Dompke, as I recall.

MR. MALLETTTE: If it please the Court, one of the questions that's been raised is—

THE COURT: This is cross-examination. This relates to Exhibit 6 or YY and the question of moneys, interest earned, and I think this goes to the question of incomes made and landing fees. This appears to be one of the Defendant's own witnesses, employees, so cross-examination will be rather wide-ranging on this individual. Let's proceed on.

BY MR. MALLETTTE:

Q If we assume that the airport continues—say it would have continued, say, at the prior rates and it appears the prior rates are generating at about \$2.2 million. If I start writing the years down here, I would have positive cash flow above expenses and debt payment for 1990 at about \$2.2 million [849] if everything stays about the same; is that correct?

MR. HUNTING: I'm going to object, Your Honor. There's absolutely no evidence that the prior rates on a cost recovery basis is generating either the net income or the cash flow figures that Mr. Mallette continues to bandy about, and there hasn't been any testimony to that effect yet.

MR. MALLETTE: Well, they're being generated by the airport.

BY MR. MALLETTE:

Q Let me withdraw it and simply say if you continue to charge out the prior rates to the airlines and everything else stays the same, we're looking for about \$2.2 million in 1990; is that correct?

A I'm not sure. I'd have to do the calculations.

Q What would you have to calculate?

A If I'm going to follow this same format, I would have to take total revenue, operating expenses, debt service interest, and debt service principal to come up with that cash flow. Now, assuming that everything follows the way you're saying it's going to follow, then it makes—that makes the assumption, that gives you your answer. You're assuming your answer already.

Q I'm assuming if you take the last three years, we take an average, we can fairly project ahead. Do you have any reason to believe that's inaccurate?

[850] A What is inaccurate?

Q Projecting ahead based on the last three years. Do you have any reason to believe that's inaccurate?

A Projecting ahead on the last three years, if you're taking everything into consideration in your projections that could happen in those three years, then there's no reason to assume it's not.

Q Let's take a couple things into effect. Isn't it true that the Buckley methodology will adjust the airport income to match inflation because it is based upon a projection of costs for each particular year? Isn't that true?

A I can say that's true it's projected on costs.

Q And isn't it also true that to the extent concession revenues are involved, they take care of inflation because it's a percentage of the revenue of the concession? Isn't that true?

A I could say that the revenue generated at concessions is based on a percentage based on the lease.

Q So let's take through the assumption, which you may or may not agree with, that we're going to have \$2.2 million per year. We're going to project this for 10 years and compare it with the Board's engineer's testimony as to the local cost of possible improvements. So let's take 1991, and I can say \$2.2 million for these years. But isn't something unusual going to happen in 1994, at the end of 1994?

[851] A Excuse me?

Q Something unusual is going to happen at the end of 1994; right?

A I don't know.

Q Well, what's going to happen at the end of 1994 with respect to the airport finances? Let me shorten this to \$2.2 million. I'll just abbreviate. At the end of 1994, what happens to the airport finances?

A I don't understand your question.

Q Well, isn't it true that the bonds are going to be all paid off at end of 1994?

A I would have to double-check to make sure that's what's going to happen, but if you say it is, then I'm assuming that you've looked at it and it says it does. I'd have to look back.

Q Well, let's check for certain. I'll get your financial statement. May we have the last financial statement, audited.

I hand you Exhibit 28 and ask you to review whatever you need in the 1988 financial statements to determine when the bonds will be paid off, and I believe you can do that by looking at the amount remaining to be paid on the bonds which should be in there.



A It looks like they end in '93 is the last year that we pay on them.

Q So '93 is the last year you pay on the bonds, and the bond [852] payments are what, about \$600,000, approximately?

A Bond payments, current amounts are \$490,000.

Q That's principal. What's the interest?

A Principal. I would—I'm not sure. I'd have to check to see what our interest payments have been. But I think \$600,000 sounds pretty close to it.

Q Yes. And to be certain, if you would, take a look at your 1988 statement, and I believe you'll find that the interest is set forth in the operating statement. I hope. Interest expense, 149, so it comes up to what total?

A 150 and 490 is 640.

Q About 640. Say \$600,000. So now we come up, and now that's going to shoot an extra amount to the bottom line under the Buckley methodology. So that's going to be \$2.8 million from then on; is that correct?

A Based on your assumptions, yes.

Q Based on these assumptions, based on the fact that the Buckley methodology will keep things current for inflation; correct?

A I can't say that for sure. I don't know enough about the Buckley study and how that affects inflation and how inflation affects it.

Q Well, isn't it based upon the projected costs for the next year?

A It's based on projected costs. In our Buckley study, it's [853] over three years. It's based on projected costs of the middle year.

Q And it's also, then, as far as concession revenue is concerned, we've established that's linked to inflation because it's a percentage of the concession revenue; right?

A As a percentage of the concession revenue, right.

Q Okay. So now '90 through '94; '90, '91, '92, '93, it's two and a half million for those years. Then '94

through 2000—well, maybe make that 1999, those years it's going to be \$2.8 million a year—sorry. \$2.8 million a year; right?

A On your assumptions, yes.

Q So if we make that assumption and carry it through, can you give us the total? I believe we have, let's see, one, two, three, four years at \$2.2 million?

A That's 8.8.

Q Okay. So I've got \$8.8 million, and how many years at 2.8?

A Looks like six.

Q Let's see. That would be '94, '95, '96, '97, '98, '99, that's six at 2.8. What's the six years at \$2.8 million going to come up to?

A Sixteen point eight. You've got the calculator.

Q Okay. Let's just be sure we're right. Two point eight times six equals—yes, I'm showing you my calculator. I have 16.8.

[854] A That's correct.

Q And then while we've got the calculator, we'll just add 16.8 plus—

A Eight point eight.

Q Eight point eight.

A Twenty-five point six.

Q Should come up to 25.6; correct? So the end of all this, the cash flow above debt service and operating expenses comes up to 25.6; is that correct?

A Based on all these assumptions by adding those numbers, correct.

Q Twenty-five point six. And what assumption should we follow for capital expenditures? That of your engineer, Mr. Pederson? Would that be a reasonable one?

A On what he assumes to be expended out there in the ten-year period?

Q Yes.

A I would make that assumption. That's a pretty—

Q So if everything's purchased, that \$15.5 million; right?

A I can't recall his number, if that's 15.5 or not.

MR. MALLETTE: Well, let's see what it is. May we have that exhibit, please.

Your Honor, may I see the court original of DA-23 for a moment just to show it to the Witness so he can see the bottom line? Thank you, Your Honor.

[855] BY MR. MALLETTE:

Q I show you the bottom line of the local share projected, and it's \$15,493; isn't that correct, looking at DA-23?

A Yes. I just want to make sure that's the column. Correct.

Q So it's \$15.5 million, approximately; is that correct?

A Correct.

Q So then we're going to come up with \$10 million, is that correct, approximately \$10.1 million cash created by the cash flow in excess of the capital expenditures if these assumptions are true?

A Based on your assumptions and the math, the calculations, then yes, 10.1 is your answer there.

Q Now, isn't it also true that if all the improvements are built, they include things like new parking area, parking garage, those things would increase your revenue, wouldn't they?

A Based on the methodology now, those things would increase revenue because you'd have more space you'd be charging for, yes.

Q And in this computation, based on the prior rates and based on your positive cash flow for the last three years, we haven't taken into account the new improvements generating extra revenue, have we?

A This doesn't take those improvements generating revenue, [856] no.

Q In fact, it would not also put the new improvements into the rate base. They'd go into the rate base, wouldn't they?

A I believe that the Buckley study—again, I'm not sure how the Buckley study—I don't know all of the Buckley study. I've only reviewed it a few times, so I believe they do go in there.

Q And something on the airfield like a new runway would go into the rate base that would be charged to the airlines and the other users of the airfield; is that correct?

A I believe that's how the Buckley method handles it.

Q Do you believe that the results of how this Buckley methodology is likely to work out in the next ten years with respect to capital expenditures indicates that those rates are reasonable or unreasonable? Do you have any opinion on that?

A Do I have an opinion on if the rates in the next ten years will be reasonable or unreasonable?

Q Well, no. Based on our running the results of the rates forward for the next ten years and comparing them to the capital expenditures for that period, that period having been chosen by the airport with respect to the preparation of their exhibit on capital expenditures, do you think this is a reasonable result or an unreasonable result?

A I'm not sure how the reasonableness of the rates reflect how this \$10.1 million comes about.

[857] Q Well, let's look at the \$10.1 million. That's what the cash flow will generate if it continues at \$2.2 million net increase, and of course when your bonds run out, don't you have some other cash on hand now? What's the total cash of the airport, restricted and unrestricted, \$9 million?

A I believe as of December 31, yes.

Q So I'd have to add this \$9 million. I forgot to do that. That would be everything built and \$19 million in cash; is that correct? That's where you're headed?



A Based on all your assumptions, again, all your assumptions, the 10.1 plus 9 is 19.1 million.

Q Now, can you tell me where any of these assumptions are wrong?

A I'd have to look at all these, the reasons and the assumptions behind them. I can't tell you right off the top of my head.

Q We've got your cash flow for the last three years; right? That's correct? You don't have any doubt about that?

A You're saying the average cash flow for the last two years is 2.2.

Q Yeah.

A Based on the numbers you've shown here, it looks like an average is 2.2.

Q And your bonds will run out in 1994; is that correct?

A That's correct.

[858] Q I mean, 1993 is the last year. \$19 million seems to be quite a large amount of money. What would the airport do with \$19 million, having built all these capital assets?

A I'm not sure.

Q Let's assume that you had a more modest situation. May I have a moment, Your Honor, to get another exhibit?

Here's an analysis done by Mr. Dompke, and if you look at cash flow between 1987 and 1988—strike that. Let me start again.

There is something Mr. Dompke did. He's assuming a landing fee of .138 per thousand pounds and a rental rate of \$8.34 for prime space, and he figures the cash flow for 1987 to be \$1.2 million and 1988 to be \$900,000. Now, I know you haven't recomputed that, but based on 1989 being slightly higher, it looks like we're looking at about a million, slightly higher than 19—well, \$200,000 higher than 1988. It looks like we're going to have a cash

flow of a million, a million one under that rate for that three-year period; is that correct?

\* \* \* \*

[860] Q Assume that we're asking the Court to impose a rate for 1988, April 1, through the end of 1989, which would produce, say, a million—let's say \$1.1 million. That would be about the average, I think, during that period. It would produce \$1.1 million.

Now, my question is I'd like to calculate whether \$1.1 million per year positive cash flow is sufficient for your capital expenditures. Am I correct that if I take \$1.1 million and multiply it by 10, I will get, what, \$11 million?

A That's correct.

Q And your cash on hand is nine, but assuming there's a refund, let's say it's eight. Okay. That would be \$8 million on hand, \$11 million generated over the next 10 years; right?

A Correct.

Q That's \$19 million; right?

A That's correct.

Q Am I correct that that's substantially larger, again, than the \$15.5 million in capital, in possible capital expenditures; right?

A I will say that's \$3.5 million higher than the 15.5.

Q Can you state any need the airport has for more than \$3.5 million after it's built all the planned capital expenditures?

A I can't make a statement to anything right now.

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#### TRIAL TESTIMONY OF JOHN F. BROWN

\* \* \* \*

[887] Q In this case there has been discussion regarding what is called a carrying charge. Would you explain that if you can as it relates to the carrying charge in the Buckley methodology as applied at that particular airport?

A I think the best way to approach a definition or an explanation of the carrying charge is to first divide it into two parts, which it's primarily made of up of. Amortization is one part and the periodic maintenance is the second part. Now, let's talk about the first part, which is the amortization.

Q Is that the same as depreciation?

A Depreciation with an interest cost in it. The amortization aspect, first of all, deals with the community's costs in the asset. That is, there is no state aid, there is no federal aid included in the cost. It considers the useful life of the facility, be it 10 years, 20 years, 30 years, whatever it may be. The amortization actually utilizes an assumed interest cost that is appropriate under the time sequence that you're dealing with, and maybe I can make an analogy.

We have a homeowner, a person who I guess would like to be a homeowner and would like to be a landlord, and he goes out and buys a house, and he goes to the bank and he borrows [888] money to buy his house. He will be paying the bank an equal monthly payment which covers his principal, retirement, and his interest costs. That is amortization. If he chooses to make that the cost element in what he's going to render his property to, he's got that part of the rental established.

If he chose to take his money out of his savings rather than out of a bank account—out of a bank loan, then he could use that for the acquiring of the house, and the economic cost aspect says that he's entitled to charge a cost, an interest cost component that would make it equal to what he might have earned on the money had he invested it in some other particular area.

Turning now to the periodic maintenance aspect of it, all that says is that our homeowner knows that he's probably going to have to repaint this house sometime, he knows the septic tank may go bad, he knows that he may have some problems with his house. And so he says, Good prudent management says I should set aside a little

bit each month so that when this particular event occurs, I will have the money available to deal with the particular problem, because it may not be fortuitous for me to go to the bank and borrow that money. It may be that there are other kinds of financial problems that might make it difficult for me to properly perform. So the basic prudent approach is to set aside a little amount of money each month so that he can take care of [889] foreseeable but not actually known and unforeseen kinds of maintenance and repair on it. So that, to me, is the best way to describe the carrying charge.

Q Did you find that this carrying charge in the Buckley methodology, as you have described it, was there from the very first Buckley study in the late 1960s?

A Yes, sir.

Q Can you identify other airports where there are similar carrying charges that are part of the rates and charges package between the airport and the airlines?

A Again, looking at the amortization portion of it, that's not uncommon for the community to use amortization both of the debt or to use amortization of moneys that come from retained earnings, as our homeowner would use his savings on it. So yes, Las Vegas does—

MR. MALLETTE: I'll object, Your Honor. Again, he's now getting into what other airports do, and then we'll have to go back and try the reasonableness of that at every airport starting with Las Vegas. I suppose we'll have to try the slot machines in the concession room.

MR. HUNTING: Your Honor, we're only attempting to show that the concept or the principle that Mr. Mallette's clients are attacking here is in fact used elsewhere. I'm not attempting to break it down in terms of a specific financial component of this versus another. I'm only attempting to show [890] that other airports and in particular the Indianapolis Airport has recognized and used carrying charges in its approach conceptually.



THE COURT: It's my understanding that the methodologies of other airports may be explored into and whether or not they employ various accounting techniques. The question, as I understand it, the Court will not permit is an inquiry as to whether Las Vegas or someone else charges reasonable rates. That's carrying this inquiry much farther than it need be, and that's what the Court addressed itself to in the earlier motion in limine.

So the objection is overruled as it goes to the question of this Witness testifying concerning the methodology of carrying charges at Las Vegas. But as to the ultimate figures in Las Vegas as they relate to something, this Court would clearly sustain any objection.

You may continue. The answer may stand. Next question.

BY MR. HUNTING:

Q Would you identify airports that you know use a carrying charge as part of their methodology similar to that in Buckley?

A Once again making the distinction between amortization and the periodic maintenance aspect of the carrying charge, we've mentioned Las Vegas; Indianapolis you mentioned; and [891] just to cite another one, Des Moines, Iowa, which was an airport brought to the community's attention by the air carriers. But the priority—or the periodic maintenance charge is not a common practice among airports. It's not a bad practice. It certainly is reasonable to provide moneys against contingencies. It may be done in different ways at other airports.

Q Mr. Brown, do you have an opinion based upon your education, your experience, your review of the facts of this case, and your testimony as previously described as to whether the carrying charge in the Buckley methodology as a matter of principle is proper for an airport to use in a rate-making context?

A For Grand Rapids in the way in which it's used, this is the proper method to do it.

Q Did you as part of your study make an effort to compare the Buckley allocations in the past as opposed to the Buckley allocations currently in any regard; and if so, would you describe that?

A Well, I didn't try to do it on a line-by-line basis, but I looked to see how much of the total maintenance and operation expenses would be charged to the terminal facility, to the airfield facility, which was where the cost effect would be for the air carriers. And also when I look at that, when I look at direct operating and maintenance expenses, I can look [892] and see the basis for allocating administrative expenses, and I find that there's not been a great deal of variance over the years as to the total amount of maintenance, operation, administrative expenses that would have been charged to the particular facilities either by the Buckley method or by an appraisal of the current operating results in 1988.

I did not go back and do specific year-by-year studies of actual versus the allocated. But what I did study, I didn't find that it varied significantly, and what the staff did, as I was asked earlier, has been consistently done over all of the time period that the Buckley concept has been in place.

\* \* \* \*

[894] Q Do you have an opinion, sir, based on your education, your experience, your review of the facts of this matter as previously testified to, as to whether the historic Buckley cost allocations remained reasonable for use in the Exhibit 6 rate study that's in dispute in this case for the period of time in dispute in this case?

A Yes. I had made a particular appraisal of what the actual results were in 1988 relative to what were produced under the Buckley study to determine just how much would be charged to the airfield, how much would be charged to the terminal building. And under the actual conditions as best the airport can track them, and they don't have a specific cost accounting system in place, but as best they could track them. I found the variance be-

tween Buckley and the actual results to be—to vary, to vary only slightly.

\* \* \*

[896] Q Let me ask you the question again, Mr. Brown. Did you as part of your study attempt to measure the airline revenues in this community by virtue of the sale of tickets and attempt to relate that to the airport charges for the airlines for the privilege to use the airport?

A Yes, sir.

Q And would you indicate what the purpose of that was in [897] terms of the total study that you were hired to perform in this case?

A I wanted to be able to see what the relationship was between revenue generated by the air carrier and the costs that the airport imposed to tap that kind of a market, the revenue market that would be available. And I utilized the data previously discussed as far as I. P. Sharp, DOT, the ATA was concerned. The only revenue I could use was passenger revenue. I didn't have freight or I didn't have mail revenue generated. But utilizing passenger revenue, I found that in 1986 the carriers generated \$133 million at Grand Rapids in air passenger ticket sales; in '87, \$143 million; and in 1988, \$160 million.

Now, that would have translated down into something like this, that the per-passenger—the ticket sale would have been \$135, \$135 and \$143 for 1988; and if I just stay with 1988, the total expenses to the airlines for landing fees, terminal rents and so forth were \$1.70 per passenger, per origin and destination passenger. And so the relationship of the expense to the revenue generated would indicate that it was about 1.2 percent of the total passenger revenue that was realized, and I used the actual figures for 1988. If I used the ordinance rates and charges, I would have had a relationship of approximately 1.5 percent, being the revenues as a percent of the expenses. And again, I don't have freight [898] revenues or mail revenues.

Q Would you look at Exhibits DA-36 and 37 and describe them briefly, if you can, in relation to what you just testified to?

A DA-36 shows graphically the revenues realized per passenger in 1986, '87, and '88, and also shows for the first quarter of 1989 the revenues realized on a per-passenger basis. DA-37 shows that the percent of actual revenues, that is, the revenues as a percent of actual expenses incurred at Grand Rapids, was 1.2 percent, 1.3, 1.2, again utilizing actual—

MR. MALLETT: Object and move to strike, irrelevant. This is like a utility trying to justify its charges by saying the complaining party is a foundry that makes aluminum and the electrical charge is only a small percentage, where the homeowners we charge an electrical charge is only a small percentage of the total cost of the home, and it's meaningless.

MR. HUNTING: Your Honor, we are attempting to show the perspective in which this issue should be addressed. This witness, and I think witnesses before, in fact, I think even the testimony of Mr. Seaman of United Airlines, whose testimony was offered by the Plaintiffs, I believe, also got into this or into similar matters. We're attempting to relate the totality of the airport charges to the totality of the [899] revenues that the airport—excuse me, that the airlines are able to achieve by virtue of serving this particular community and to show in particular the very graphic comparison between the new ordinance rates under attack, which are only 1.5 percent of the ticket price or revenue, as opposed to the range of 1.2, 1.3 and 1.2 percent that was represented by the old or the prior rates as a percentage of the airline ticket.

Mr. Mallette has taken considerable time in attempting to compare the old rates and the new rates with charts for years in which they were not even applicable, and I would suggest that this establishes a very appropriate perspective both in the total sense and in the sense of comparing the old rates versus the new rates when translated as a percentage of the ticket revenue that the airlines are



able to receive by virtue of having the privilege to serve this community.

THE COURT: Well, certainly this is not determinative of the questions the Court has before it. But under a test of relevancy, which is Evidentiary Rule 401, I find it's relevant.

Let's take a short break and then continue.

MR. HUNTING: Could I just offer these and then take a break?

THE COURT: I think there's been an objection to them and I will receive them.

[900] MR. HUNTING: Okay. Thank you.

(Proceedings recessed at 2:35 p.m.; reconvened at 2:55 p.m.)

THE COURT: You may continue.

MR. HUNTING: Thank you.

BY MR. HUNTING:

Q Directing you back, Mr. Brown, to the data contained in Exhibit DA-37, I think either I asked a question that mixed revenues and airport expenses or you gave me an answer that did. But would you clarify for the record in relation to DA-37 the amount that the totality of the airline/airport expenses at the new or the ordinance rates would be a percent of the passenger revenues in Grand Rapids so that that figure can be compared with the figures on DA-37?

A DA-37, for 1988 it should say that 1.2 percent of the airline revenue goes to the costs incurred for terminal rentals, landing fees, and other facility charges at Grand Rapids, and on the actual costs incurred and on the ordinance costs, it would have been 1.5 percent of revenues.

Q So taking 1988 as the central or the full year, the new rates would have been 1.5 percent, whereas the old rates were 1.2 percent of the passenger revenues at the airport?

A That is correct.

Q And again, the data base for that particular information was what?

A The I. P. Sharp data, which in turn is generated [901] originally from the airlines through the ATA and the Department of Transportation.

Q On occasion I think some of your exhibits may use the word "pro forma." Would you explain what you mean by that word in relation to either the new rates or the old rates?

A When I've used "pro forma" in any material submitted, I was referring to the ordinance rates.

Q Or the new rates?

A Correct. Ordinance or new rates.

\* \* \* \*

[902] Q You mentioned earlier that you reviewed a Moody's publication in April of 1989. Would you describe that in more detail, sir, so that we can move on to some additional exhibits?

A In April of 1989 Moody's published a report entitled "Rating Airport Revenue Bonds," and it dealt with 56 airports and presented both written statements as to the approach Moody's takes to rating airport revenue bonds in terms of the service, the impact of deregulation, the sponsor of the air service area, and other matters such as that, as well as a series of ratios and revenues from various sources that they looked at.

Q After the Court made its ruling a week ago Monday, did you have occasion to look at some of the Moody's information as it may have related to airport revenues and the breakout or the distribution of different types of airport revenues?

A That is correct.

Q And would you tell me what you did and would you indicate the source of information you found in Moody's, the nature of the information?

A Moody's data I looked at from the standpoint of the information that they presented relative to what percent of revenues came from what sources, such as airlines,

[903] concessions, parking, other. I looked at the operating or what they call a net takedown ratio to see from an overall standpoint how Grand Rapids stood in terms of the net revenues that were generated.

Q And prior to getting to an exhibit, would you identify the other six like-sized airports that you testified to earlier as part of your study before the time we make a comparison of those to Grand Rapids and to Moody's?

A Des Moines, Iowa; Charleston, South Carolina; Colorado Springs, Colorado; Wichita, Kansas; Spokane, Washington; Midland, Texas.

Q Were you, in choosing those airports, at all concerned about the methodology that may have been either embodied in the lease at those airports between airports and airlines or reflected in the practice by which rates, fees and charges were made?

A No. I was interested in what made up the revenue dollar at those airports, to look at it relative to what made up the revenue dollar at Grand Rapids.

Q And were you able to obtain information regarding the operating revenues, the interest income, the total revenues, the operating expenses, and the net revenues of those six airports you described?

A Yes.

Q Would you indicate how you obtained that information?

[904] A Well, I got it both from audit reports and statements prepared by the community as well as data presented; not data presented in the Moody's report, because I didn't take the six airports out of the Moody's report. I looked at the 56 and in a sense just said from the total standpoint, if I took all of the United States, because they're very large, very small, all different kinds, sizes and shapes of airports, of the 56 airports, how would Grand Rapids look, how would their revenue dollar look relative to the other airports. I also did that for the six airports.

Q Did you obtain 1988 financial statements or reports from each of those six airports?

A Yes, I did.

Q And did you then work with that information, and if so, would you indicate what you did in attempting to develop the net takedown ratio for those six airports?

A For the net takedown ratio—and it might be well to identify what Moody's calls a net takedown ratio. They take the operating revenue, the interest income and call it the total revenue. From that they subtract the operating expenses, and that figure is net takedown. It's a figure they're particularly concerned with relative to the moneys that would be available to pay principal and interest on airport revenue bonds. So looking at Moody's and at the six airports, I did, A, took Moody's as Moody's reported it; and [905] B, took the six airports and computed it on the same basis Moody's had, Moody's had done, excuse me.

\* \* \* \*

Q Did the net takedown ratio or analysis also appear in the Apogee Public Research Report attached to court papers in this particular proceeding more than a year ago?

[906] A Yes, sir.

Q And is this a ratio or an analysis that you have become familiar with over the years that you may have been doing airport work?

A Yes, sir.

Q Is it an analysis that, so far as you know, Moody's has accomplished on previous occasions when they may have been rating airports?

A Moody's is very strong on the use of this ratio.

Q Can you indicate, sir, the most well-known rating agencies as it relates to the creditworthiness of public entities?

A Well, the two would be Moody's and Standard & Poor, and I didn't mean to slight Standard & Poor. Standard & Poor certainly looks at a net takedown ratio



also as far as the ability of the airport to generate revenues, control expenses.

Q And did you undertake this particular study after you learned of the ruling of the Court a week ago Monday as it related to evidence of comparable airports that might be permissible from a revenue point of view as opposed to the ruling that indicated that some comparable airport cost data might not be admissible?

A Yes, sir.

Q And in particular did you then take this particular ratio and apply it to Grand Rapids and to each of the six like-sized airports that you described that were chosen on an origin and [907] destination basis?

A I did that in addition to looking at the distribution of the revenue dollar, which I understand the Court was interested in as far as the sources such as parking, rental car, concessions, airlines, others that make up the total revenue.

Q Did you find in your experience that typically airports would have some similarity in the range of concession activities and the types of revenue sources that airports have?

A Particularly when you deal with six airports that are of comparable size, like size.

Q Explain what you did in terms of comparing those six airports to Grand Rapids, dealing first with the statistics that you collected before we deal with the graphic presentation, sir.

A Well, I computed the net takedown for each of the six airports on the same basis that Moody's computed theirs so that also I would have it for the Moody's report which had 56 airports involved.

Q And did you likewise do that for Grand Rapids?

A Yes, sir.

Q And was that done for Grand Rapids both on the old rates and/or on the so-called new or ordinance rates?

A Yes, sir.

[908] Q Would you indicate the results of that work reflected as a percentage of total revenues for those six airports and Grand Rapids?

MR. MALLETTE: I'll object on the grounds that the testimony is that the proposed computation computes the amount that would be available to pay debt service but does not consider as to whether there's any debt service to pay, and there's no way of determining whether or not the six airports, for example, are like Grand Rapids with almost no debt service so that the entire takedown goes to the bottom line or otherwise.

THE COURT: But doesn't that go to the weight, though, to be given to the testimony at a particular airport?

MR. MALLETTE: I would think at that point, since he's testified he didn't take—the debt service is not shown. I would think it would also be irrelevant.

THE COURT: But the debt service would be part of the operating expenses, wouldn't it?

MR. MALLETTE: No. The operating expenses do not include debt service. I believe he testified that the takedown is interest income plus operating revenue, that the operating expenses—that that is the amount available for debt service. I think that was his testimony.

THE COURT: Well, it seems—response, Mr. Hunting?

MR. HUNTING: I hate to be guilty of putting one of [909] Mr. Mallette's charts up on the easel, but it's very clear that Mr. Mallette has chosen to reflect some of the same factors in a way that he believes assists his case. We are attempting to frankly take some of the same factors and to compare them, especially since the witnesses of the airlines, without comparing to other airports, have reached conclusions regarding the alleged excess of positive cash flow, the alleged excess of net income, the alleged surplus that results in a number of years. We are attempting to show specifically that the airport here in Grand Rapids falls very much in the mean or the pattern of other similar airports throughout the country as it

relates to these matters and as it relates to the so-called distribution of the revenue pie of dollars.

THE COURT: And built into that is, of course, the interest expense?

MR. HUNTING: Yes.

THE COURT: Overruled. We'll take the answer. You may continue, sir.

BY MR. HUNTING:

Q Would you please give the name of the airport and then the percentage that you found prior to the time that I sponsor an exhibit that has all of those details in it, so that we're just dealing with the name of the airport at this point and the official report and the percentage prior to the time I offer an exhibit, Mr. Brown?

[910] A And are you identifying percentage as the net takedown percentage?

Q Yes.

A 1988 for Des Moines, 50.2 percent; Charleston, 62.7 percent; Colorado Springs, 61.3 percent; Grand Rapids utilizing the present rates, 42.7; Grand Rapids utilizing the ordinance rates, 47.3; Wichita, 21.7; Spokane, 32.3; Midland, 39.1. The mean of those without Grand Rapids included, 44.55.

Q And was there a median calculation, too?

A The median would have been 44.65.

Q So realistically there's no statistical difference between the mean and the median in this regard; am I correct?

A I don't believe so.

Q Did you then reflect the information and the additional columns in a bar chart to which has been attached the data from these airports that you read?

A I believe so, sir. Yes, sir, I'm sorry.

Q And I will show you what has been marked DA-42, and if you'll wait a minute while I distribute that, I'll have a question for you.

Is Exhibit DA-42 the graphic presentation of the work you described and the columns of information that you

described, and have you attached to DA-42 an information sheet that was the basis of DA-42?

A That is correct.

[911] Q And in particular, would you describe what the vertical columns in the bar chart mean in DA-42, and again indicate the source of the information for DA-42, starting from left to right?

A From left to right, the like-sized airports, of which there were six, are reflected in the information set forth in the attached table and are based upon the mean of those six airports. Grand Rapids is Grand Rapids based upon the ordinance rates.

Q So the middle column?

A The middle column, excuse me.

Q Is Grand Rapids at the new rates rather than Grand Rapids at the old rates; am I correct?

A Correct. And the third and last column was Moody's and their 56 airports, the mean of those 56.

\* \* \* \*

[913] BY MR. HUNTING:

Q Does the Moody's article reflect the status of the community in which an airport exists as it may relate to the bond rating for that airport?

A Moody's in their special report on rating airport revenue [914] bonds cites the importance of the air service area as one of the key factors to look at as far as the rating of the creditworthiness of bonds, airport revenue bonds.

Q And has that been consistent with your practice and experience with airports, and in particular, with the bond rating of airports and the attempts of airports to obtain financing?

A I've worked extremely long and extremely hard to get the rating agencies to understand over time that it's the community that generates the air passenger, not the airline. You may change the tail and the colorings of the airplane, but it is the people, they are the people who generate the passengers.



And finally, both Standard & Poor and Moody's have basically come around to saying it isn't a long-term agreement that protects the widows and orphans; it is the strength of the community and its ability to generate air passengers that will be their ultimate protection, and obviously, prudent management of the airport.

Q Did you also make any comparison of the net take-down ratio or analysis within the confines of just the Kent County International Airport by comparing previous years to any current years in issue?

A Yes. I looked at it over a fairly long term or over the ten-year period, 1979 through 1988.

[915] Q Do you have those figures available?

A Yes, sir.

Q Would you read those into the record for that period of time, giving the calendar year and figure, please?

A 1979, 49.6 percent; 1980, 47.1 percent; 1981, 39.1 percent; 1982, 44.7 percent; 1983, 49.0 percent; 1984, 50.3 percent; 1985, 52.9 percent; 1986, 49.5 percent; 48—I'm sorry, 1987, 48.8 percent; and 1988, 42.7 percent.

Q And in your experience, for that ten-year period of time, is that a reasonably consistent analysis or ratio for that period of time?

A Very consistent, very balanced, no wide fluctuations.

Q Mr. Brown, do you have an opinion based upon your education, your experience, your review of the facts of this case, your study as you just indicated it with reference to the information in Moody's and DA-42, as to whether the operating net income of the airport is reasonable when compared to the six other airports in DA-42 and when compared to the industry data in Moody's as also reflected in DA-42?

A The mean of both Moody's and the six airports and of Grand Rapids is very, very close.

Q Directing your attention to the landing fee in this case, would you describe the components of the landing fee as historically used by the Kent County International Airport?

A The components of the landing fee relating to facilities [916] would be the airfield and the airline terminal apron, aircraft parking apron.

Q And would you describe the components of the landing fee as it relates to the factors of weight and frequency as it has been used at the Kent County International Airport?

A Grand Rapids determines the total cost properly assignable to the airfield, and it then distributes this cost between the users half on the basis of the weight landed by the users and half on the basis of the number of aircraft operations, landings and takeoffs of the users, or takeoffs of the users.

Q Without getting into the specific monetary amounts of landing fees at other airports per 1,000 pounds of certified aircraft weight, can you tell me based upon your experience the other ways in which airports that you're familiar with approach the landing fee components as it relates to the weight factor and the frequency factor?

A Generally speaking, the airport will use just a weight factor. If an operations factor is in, it's relatively small. But by and large, it's primarily a hundred percent weight or what we call weight/frequency, weight of the aircraft times the landings of the aircraft.

Q And what have you come to learn is the component portion of the Kent County International Airport landing fee in that regard?

A Well, that they're using 50 percent of the cost allocated [917] on the basis of operations and 50 percent allocated on the basis of weight.

Q How does that particular 50 percent allocation impact the air carriers versus general aviation in terms of the breakout of landing fee for commercial airlines?

A Well, if I could answer it this way, it's, I think, quite generous for the air carriers because a more signifi-

cant proportion of the total costs assignable to the airfield are allocated to the general aviation users than you would find at other airports where it was done on a weight/frequency basis. And so the total weight of the air carrier portion of the airfield probably will run 80, 85, 90 percent of the total weight landed at the airport.

Q And I take it that's because the commercial air carrier planes are many times heavier than the typical commercial—excuse me, than the typical general aviation plane?

A Yes, sir.

Q Are you able to compare that situation as it relates to the cost allocation in the Buckley rate study between general aviation and the commercial airlines, in particular regarding the landing fee?

A Well, there's a fairly substantial portion of the airfield costs that the air carriers don't have to bear, since that is a—that is the methodology used under the Buckley system to distribute the costs.

[918] Q If, for instance—I think we determined through other witnesses that Indianapolis had used a 90 percent weight factor and a 10 percent frequency factor. If that were to be applied in Grand Rapids rather than the 50 percent/50 percent, roughly what would happen to the general aviation cost allocation under Buckley if that type of change were to have been made?

A Well, it would be much less; much, much lesser amount of the total dollars being allocated to the general aviation activity.

Q Would you indicate your experience at other airports as it relates to the handling of general aviation fuel sales and other income from general aviation and compare it to your familiarity with this airport?

A Well, it's not uncommon for airports that utilize a compensatory cost of service rate concept to determine the costs properly assignable to the airfield, to credit revenues received from the fuel sales and the balance picked up by the carriers a hundred percent and distribute it among them on the weight basis that they have incurred or they have produced.

Q Apart from the dollars that might be involved in other airports, in that regard, are there so-called compensatory or cost of service methodologies that may treat general aviation in that fashion at other airports in your experience?

A Yes, sir.

[919] Q Have you, when you have traveled to the Kent County International Airport, had occasion to notice the roped off or the stanchioned area in front of the airline ticket counters in the front part of the terminal building?

A Yes, sir.

Q And from your experience and review of the materials in this particular case, including the Buckley study, are the airlines charged for that space that may be stanchioned off or roped off where passengers and other people may line up or queue up prior to the time they can get their ticket and check their luggage?

A No, they do not pay for that space.

Q Are there other airports, without getting into the financial terminal rental rates, where the airlines are charged for an entire concourse area?

A Phoenix, Arizona, again a case in point. Since security became so strict and the airlines were restricting the utilization of the concourse to only air passengers, the community decided to make a hundred percent of the concourse airline space and call it revenue producing.

Q Directing your attention back to the details of the Kent County International Airport, would you indicate the extent to which you studied the airline costs at this airport as a percentage of the total airport expenses dealing only with the Kent County International Airport in that comparison?

[920] A Yes, sir.

Q You can refer to—apparently you have a chart of some sort in front of you?

A Yes, sir.

Q Would you refer to that information, describe it first and then read that into the record, if you will, please.



A Well, I was interested in seeing how much of the total airport costs were being borne by the airlines. So I took the total operating expenses, local depreciation, total expenses, and related it to the airline costs, meaning landing fees, terminal rentals, apron overnight charges, and I ran the comparison from 1979 through 1988. In 1979 the airlines' share of those costs were 43.7 percent; 1980, 48.0; 39.2 in 1981; 45.0 in 1982; 56.4 in 1983; 53.4 in 1984; 50.7 in 1985; 44.8 in 1986; 43.3 in 1987; and 40.6 percent in 1988.

Q Again, would you indicate what factor was a percent of what other factor for the figures you just gave?

A I computed the airline costs based upon their payments for landing fees, terminal rentals, apron use charges, to the total cost of maintaining and operating the airport and expressed that as a percentage that the airline was of the total.

Q And what conclusions did you draw from that study and those series of figures, sir?

A I find no basis to say that airport rates and charges have [921] been increased significantly as a portion of total airport costs. They have maintained constant, or in the last five years actually decreased.

Q And I take it that for purposes of those percentages, so we can have the record accurate, those were actual costs incurred under the so-called old rates?

A Correct.

Q Just to clarify, each of the years for which you read, that would have been calculated based upon whatever landing fees, terminal rental rates and overnight airport parking fees would have been in existence at the time in the years you described?

A Money actually paid to the community.

Q Based on your work over the years, would you describe the importance you attribute to the economic or other base of a community as it relates to airport traffic in that community?

A Well, I think I said before that I worked long and hard to get the rating agencies to understand that the economic base for air transportation provided by the community is what generates air passengers. In addition, I participated in several Civil Aeronautics Board proceedings when they were still making judgments as to what service could be provided, what certificates of public convenience and necessity could be awarded, and that was always a key consideration to present to a hearing examiner as far as justifying additional air [922] service, either in terms of competitive air service or service where none had existed before.

Q And in what context would this occur?

A In the context before the Civil Aeronautics Board?

Q Yes.

A Would be route proceedings that were being held to consider whether additional service should be provided in the form of competitive service or service where none had existed before.

Q In the context before deregulation, were there times when the airport was attempting to attract additional airline service into the community?

A There were periods before deregulation and since deregulation that still goes on that communities were—some communities worked very hard to convince the air carriers to improve expanded air service to their community.

\* \* \* \*

[923] Q Can you describe the infrastructure or the aspects of a community that, in your opinion and in your experience, relate to matters regarding the scheduling of airline traffic into a community?

A Well, if I understand the question correctly, certainly the population of the community, the population growth of the community; the ability of that population to buy transportation, meaning the average personal income of the community. Many years ago the FAA did studies that—it actually is their predecessor, but call it

the FAA, studies classifying communities as institutional, marketing, balanced industrial, and they were able to ascertain and to put forth the argument that an institutional community developed much more air traffic per 10,000 population than another balanced or marketing or other type community.

Institutional might be a Miami, a Las Vegas, a Washington, D.C. A marketing type community such as Chicago or Dallas would develop less than an institutional, but more than the others. Balanced would—and a marketing—excuse me. A balanced would be like Cincinnati, Ohio, and it was not on the high side nor on the low side, and that an industrial community developed the least amount of passengers per 10,000 [924] population, and that would be a Pittsburgh, strictly manufacturing, maybe a Detroit. So yes, the economic base, and portions of it were important considerations as far as judging air service, air service potential, air service growth, air traffic growth.

Q And have you actually attended governmental hearings prior to deregulation where these considerations and these factors were actually discussed and taken into account in either the increasing of airline traffic into a community or the decreasing of airline traffic into a community?

A I participated in them as representing the community's interests at times as an airport management consultant.

Q And specifically, what are some of the aspects of the infrastructure of a community, other than its population, that may be important in making it a community that can attract travelers to the community?

A Well, certainly a community that has a school system that one wants one's children to be in; certainly a community that is low in crime rate, high in good police security; a community with libraries, art museums, cultural opportunities; good fire protection. The things that

go to make for a good community provided in terms of parks, streets and sewers, things of that nature.

\* \* \* \*

[Q] [925] What particular finding did you make as to this airport regarding its hub or its non-hub status?

A Well, this airport ranked 81st among the airports of the United States, and it's classified by the Federal Aviation Administration as a small hub, meaning less than twenty-five hundredths of one percent of the total enplanements of the United States occur there. We have small hubs, we have medium hubs, we have large hubs, and in fact some that are non-hubs, and I need to make the distinction. I spoke earlier about hubbing in the sense of a significant volume of connecting passengers, and in this sense we're talking now about a federal government classification that simply relates it to total domestic enplaned passengers.

Q Now, did you take note of any of the so-called market entries or exits of major airlines during the period of time in question here?

A I didn't find any of the major airlines that had left this airport. There had been some changing back and forth of the commuters, and I think it was interesting to note that Delta Airlines has announced it will initiate service on the 2nd of March, 1990.

Q And does Delta have a hub somewhere?

[926] A In Cincinnati, Ohio; Atlanta; as well as Salt Lake City and some other places.

Q Directing your attention again, you mentioned earlier the value of the airline revenue market. Would you compare that statistically in terms of the growth of the airline ticket revenues in this community from 1986 to 1988 versus the rate of inflation for that same period of time?

A We found that the local market for air passenger revenues, air passenger ticket revenues had grown 19.4 percent during that period while the CPI, the Consumer Price Index, had grown 7.9 percent.



Q And again, what were the volumes of the dollar revenues for this market as to total ticket prices for those three years, '86, '87 and '88?

A Rounding the numbers, it would be \$134 million the air carriers realized in passenger ticket sales in 1986, \$144 million in 1987, and \$160 million in 1988.

Q Did you then make an effort to quantify the difference between the old and new rates in their totality when compared to the 1988 total dollar volume of ticket sales in the community encompassing this airport?

A I looked at that, and it indicated that probably is less than one percent of the value of the market that would have been represented in the increased costs versus the actual rate if the ordinance rates were in place versus the actual rates, [927] or \$576,000.

Q Did you continue on with the preparation of any other charts and data with reference to the operating revenue at the six other airports that you described?

A Well, once again, I wanted, as I understood, to provide something that could be reviewed here in court regarding the size of the revenue sources at these other airports, and I looked at parking, automobile parking, rental car revenue, other concessions, airline revenue, and other revenue at Grand Rapids, as well as at the six like-sized airports.

Q Did you follow the same format as you described earlier in your retrieving of information as to these airports from their financial statements?

A Yes, sir.

Q And did you, as before, attach to what I have now had marked as DA-43 an information sheet to support what is depicted graphically in DA-43?

A Yes, sir.

Q And would you describe what DA-43 depicts, and in an effort to move this along quicker, would you indicate why you prepared DA-43, taking into account that the detailed data is attached as a second page to DA-43?

A I think it shows very clearly, graphically, that Grand Rapids is very, very similar to these other like-sized cities in terms of their generation of revenue, whether it be from [928] concessions or rental cars or other concessions or from the airlines or from other revenue sources.

Q And I take it the six like-sized airports are the same that we discussed earlier?

A Yes, sir.

Q And is this an effort, then, to relate the different segments or pieces of the pie that would be represented by the total airport revenue at these six airports and at the Kent County International Airport?

A The mean of those six airports, yes.

Q And in particular, was DA-43 prepared utilizing the new or the ordinance rates for the Kent County International Airport?

A Yes, sir. It is indicated under Grand Rapids in the box at the bottom of the graph in parenthetical expression, "Ord Rate", meaning ordinance rates.

Q And the source of this information was from the financial statements of the six airports and, I would assume, from the financial statements and records of this airport?

A Yes, sir.

Q What conclusions did you draw from the information attached to DA-43 and from the graphic presentations of DA-43 as it relates to the revenues of this particular airport?

A We're certainly not dealing with an airport that generates parking revenues or rental car revenues relative to total revenues or airline revenues that are significantly different [929] than the revenues that are generated at other airports of a like size.

Q Would this coincide with your airport experience in terms of concession types of activities and revenues generated therefrom?

A Yes, it would, and it doesn't really surprise me because the kind of agreements written based upon rental

cars or based upon parking, if that is out for a concession, are not significantly different until you get to very large airports or communities, and sometimes then aren't that much different.

MR. HUNTING: We would like to offer DA-43 at this time, Your Honor.

MR. MALLETTE: No objection.

THE COURT: Received.

BY MR. HUNTING:

Q Would you continue on, Mr. Brown, with your findings as it relates to this airport and compare, if you will, the typical expense structure of this airport versus other similar airports; not in specific dollars, but in the types of expense categories?

A Again, I found that very similar to what one would find at another airport of a like size. The salaries and wages component, the supplies and materials component, an outside services component, there is nothing that I found unusual at Grand Rapids from that standpoint.

[930] Q Did you come to learn anything about the grant assurance as it relates to this airport and FAA funds provided in recent years for which there were such assurances; and if so, what did you learn?

A Yes, sir. The grant assurance has three particular things that one would be interested in in this particular setting. Number one, did the revenue stay on the airport. There's a grant assurance requirement that the revenue stay on the airport, and I found no basis and no evidence that moneys went off the airport other than that were allowable under the grant to pay for reasonable services provided by the community. I didn't find that the FAA had challenged the reasonable rate and charge provisions of the grant assurances, and I didn't find any indication that the FAA had challenged the unjust discrimination provision of the grant assurances.

Q And would you explain from your perspective, utilizing your experience, what the unjust discrimination

portion of the grant assurances are, the application or relationship of that particular grant assurance as it might relate to any issues in this case?

A It may be more a legal question than a general management question, but I take it to be unjust discrimination if it's between users of a like category, and if the question is general aviation versus commercial, scheduled air carriers, there isn't discrimination since they are not competing [931] against the scheduled air carriers as a significant source of traffic diversion for them. So that would be my layman's interpretation.

Q Did you find any indication in any materials that you have reviewed that the FAA challenged or investigated any factual issue you understand to be in dispute in this case?

A No, sir.

Q Did you have occasion to continue your study as it related to airport revenues on an enplaned passenger basis, and would you describe what you did, attempting, if you can, to borrow upon any similarities that you've already described for the other charts?

A Well, I put it on a per passenger basis to look at it from a slightly different perspective. I looked at parking, automobile parking revenue, rent-a-car revenue, other concessions, airline, other, and total. And without burdening the record as to all of the figures, what I found was that, for example, Grand Rapids developed \$2.53 per passenger from parking, and the mean of the six airports developed \$2.04. The rent-a-car revenues were \$1.30 at Grand Rapids and \$1.26 at the mean of those airports, probably indicating, again, markets that are comparable sized and agreements that were quite similar. Other concessions was \$1.30 at Grand Rapids and \$.89 at—that is the mean of the others. Airlines were \$4.33 at Grand Rapids; \$4.15 at the mean of the six. Other [932] revenues, \$1.53 at Grand Rapids; \$2.42 at the mean of the others. And for total revenues on a total per passenger basis, \$10.92 at Grand Rapids, \$10.76 at the other air-



ports; again perhaps underscoring the reasonableness of my looking at these other airports, these particular six.

\* \* \* \*

[934] BY MR. HUNTING:

Q Continuing on now, Mr. Brown, would you indicate how the Buckley methodology principles relate to the principles of any other rate-making methodologies with which you have been familiar or that you have created or implemented?

A The Buckley or compensatory or cost of service concept of airport/airline rates and charges as utilized at Grand Rapids is very, very similar to that which I developed as early as 1952 and utilized at several airports in the United States. So I don't find it new, unique.

Q And are there other airports, in your experience, that today operate under a Buckley type or a cost of service type or a compensatory type methodology as it relates to the [935] establishment of landing fees, terminal rental rates, and other charges between airports and airlines?

MR. MALLETTE: I'll object. That's a compound question. It asks three questions. The Buckley methodology is used here.

MR. HUNTING: I'll break it up.

BY MR. HUNTING:

Q In your opinion, is the Buckley methodology a compensatory type methodology?

A Yes, sir.

Q In your opinion, is the Buckley methodology a cost of service methodology?

A Yes, sir.

Q In your opinion, is the compensatory methodology also known as a cost of service methodology?

A Yes, sir.

Q Are there today, in your experience, airports utilizing compensatory or cost of service methodologies to establish the charges between airports and airlines?

A Yes, sir.

Q And are the Buckley principles to some extent also existent in those other compensatory or cost of service methodologies based upon your actual experience?

A Yes, sir, because the essence of the compensatory cost of service Buckley approach is the establishment of cost centers, [936] functional areas on the airport. There are cost definitions, there are cost accounting or cost allocations to those particular functional areas, and the utilization of the particular functional area provides a basis for the distribution of those costs between the users of the particular functional area.

Q Did you find any indication that costs had not been incurred as reported?

A No, I have not.

Q Did you find any indication that costs were improperly incurred by this airport for non-airport purposes?

A No, I did not.

Q Did you find indications that costs in the past have been imprudently incurred by this airport?

A Well, I haven't heard of any charges of imprudent utilization or incurring of costs at the airport.

Q In an effort to simplify this, I take it you have attended hearings before the State or FAA where projects were being discussed or approved?

A Would you define projects?

Q The types of contracts that might become part of a rate base. Let me ask it in a different way. It was perhaps a clumsy question.

Are you familiar with the way in which costs are developed by virtue of projects before they become part of the [937] cost base?

A Are we speaking now of capital costs?

Q Yes.

A For—

Q Let's take a particular project. Are you familiar with the way in which a project might evolve from its first ideation, if you will, and the time that it may become part of the cost base?

A Well, I've been involved in discussions regarding the feasibility and/or desirability of particular capital programs, particular capital cost assets as to whether or not appropriate for the community to engage in.

Q And I take it you're aware that in some of these instances projects, when approved, implemented and paid for, can have useful life of anywhere from 10 to 30 years?

A Yes, sir.

Q Is that standard for airports in terms of the different types of projects airports might have apart from the monetary amount of the projects?

A The depreciation periods vary from 10 years, 20 years, 30 years, yes.

Q Did you find any substantial variation in the depreciation periods in Buckley versus other cost of service or compensatory methodologies with which you are familiar?

A Not significantly, no.

[938] Q Did you study the rates, fees and charges on a per passenger basis as it relates to only Grand Rapids?

A Yes, sir.

Q And would you pull whatever tabulation or information you may have and indicate for the record those statistics that relate only to Grand Rapids on a per passenger basis dealing with the old rates and the new or the ordinance rates?

A When you speak of the costs that are—that were pulled, we're talking about the costs that became airport—airline costs?

Q Yes.

A Yes, I did, and I studied it over a particular period from 1980 through 1988.

Q And would you indicate the results of that particular study?

A Well, to translate it down into something a little more easy for me to understand, I put it on a cost per passenger basis, so that I said the airlines' cost per passenger over that time period of 1980 through 1988 ranged from \$1.40 in 1980 to \$1.70 in 1988 with a high in 1983 of \$1.90 per origin and destination passenger.

Q And were those figures adjusted to any extent for inflation?

A No, sir.

Q Did you then take those per passenger cost figures at [939] Grand Rapids and compare them to any inflation rate for the same period of time?

A Well, I did look at the high point in 1988—or 1983 relative to 1988 and found that the cost increase at Grand Rapids on a per passenger basis was 15.3 percent, and during this same period the Consumer Price Index increased 18.8 percent, which indicated that apparently reasonably prudent management was being followed.

Q And did you use the new or ordinance rates for 1988 in that comparison of the old rates?

A Well, I'm looking at the actual cost to the passenger, not to the ordinance rate.

Q So that looking only at actual cost per passenger—

A To the airline.

Q To the airline.

A Excuse me.

Q The increase from 1983 to 1988 was less than the inflation increase for the same period of time?

A That's correct. I'm sorry. I would like to correct the record. I was looking at two documents. The hour is late. The comparison between 1983 and 1988 is based on the ordinance rate, not on the actual rate, and the percentage relationship of increase was 15.3 percent for Grand Rapids and 18.8 percent for the Consumer Price Index.



Q And would you give the raw figures in the record just so [940] that that will reflect it for those periods of time?

A They were \$1.90 per origin and destination passenger in 1983 and \$2.19 per passenger in 1988, using the ordinance rates.

Q Making that comparison, what was the percentage increment for that period of time from 1983 to '88?

A 15.3 percent.

Q And the inflation CPI for the same period of time was what?

A 18.8 percent.

Q So that even with the new rate comparison, it would be less than the CPI or inflation rate for that period of time, '83 to '88?

A Yes, sir.

Q Did you analyze any of the information regarding airlines that came in or left this airport in recent years for purposes of your study?

A Other than simply to note that there had been no significant departure of major airlines from the community, and also to note that Delta Airlines is scheduled to commence service in March of this year.

Q And what significance, if any, did you attribute to that information, sir?

A Well, I would say that certainly the airport/airline rates and charges were not such as to cause the carriers to leave [941] the market, particularly a market of that size, nor prohibiting or preventing Delta from coming into the market.

Q Sir, do you have an opinion based upon your education, your experience, your review of the facts, files, documents, and studies you've taken into account in this case as previously described, as to whether the new or the ordinance landing fees, overnight aircraft parking fees, and terminal rental rates under the Buckley approach are reasonable?

A In my judgment, they are reasonable.

Q And would you provide some brief summary for that conclusion, sir, recognizing that it's unfortunately taken me quite awhile to get you to this point?

A First of all, we are dealing with costs that were actually incurred. We are dealing with costs that have not been challenged as being imprudent costs. We are dealing with a reasonable and consistent basis for allocating these costs to functional users. We are dealing with a basis which is not foreign to the airport industry and to the airlines within that industry for allocating those costs to the users in the forms of rates and charges.

I believe also that an independent check was made in the sense that FAA has found no reason to challenge the airport's rates and charges either for reasonableness, unjust discrimination, or for the purpose of any money going off the airport. And with all due respect, I had to look at other [942] airports to see how they were doing both in terms of costs, also in terms of revenues, in terms of net takedown ratios, and I find in support of my conclusion that Grand Rapids is right square in the middle of the other airports and the airport industry, and one might characterize it as an all-American city.

Q And I take it, sir, if you find the new or the ordinance landing fees, rental rates, and overnight aircraft parking fees to be reasonable, that for the same period of time you likewise find the old or the prior rates to be reasonable?

A Yes, sir.

\* \* \* \*

[949] Q That's not the question. The question is if you take the law as it is now, the projections are correct if we use the locally funded portion, the amount determined by the engineer for the airport; is that correct?

A I will agree that if you have that amount of money and you are acquiring or accumulating additional moneys, you will have the moneys available at some level to take care of future capital requirements.

Q And to put many more million in the money max, right, at the prior rates?

A Depending upon what criteria and what assumptions you make for your forecast based upon your illustration this morning, there would be significantly more money in there, but it did not come from the air carriers.

Q By the way, isn't it true that the Board subsidized the costs in the airfield not paid by general aviation by using funds from the concession income?

A I don't know that I like the term "subsidize." The basic concept of establishing the distribution of costs relative to general aviation and the airlines was to be certain that the airlines weren't burdened by the cost of general aviation. Now, the community has chosen not to assess general aviation at a rate that might be equal to the amount of costs assigned in the airfield on it, and the revenues that would have been [950] realized there are being realized from concession activities.

Q And so isn't it true, then, that the concession revenue, in effect, pays for the general aviation use of the airfield? They have to have the money from somewhere, and that's where it comes from?

A Based upon the allocation that is utilized there on it, the costs that the system had developed relative to the revenues received indicate there is a shortfall.

Q And isn't it true that that comes from the concession revenue which is derived, directly or indirectly, from the airline passengers?

A Yes.

\* \* \* \*

[952] Q Am I correct that airports have compensatory systems of rate-making, but that doesn't necessarily mean they have a Buckley system; they could have some other sort of [953] compensatory system?

A I've tried to characterize the Buckley system in the sense of the essence of it, and the essence of it, I feel, is that we establish the costs of the airport, we relate the costs to the functional areas of the airport, we relate the

use made of those particular functional areas, and we distribute the cost to the users on that basis. Now, various airports that use the cost allocation basis may have variations in the actual translation of the cost by functional area to rates and charges for the air carrier.

\* \* \* \*

[955] Q Am I correct that if oil were discovered in the landing area and the airport were able to sell the oil to an oil company by pumping it from land adjacent to the landing area, that would have no effect on the landing fee whatsoever; is that correct?

A Revenues are not used in the calculation. It is only the costs, the economic costs incurred.

[956] BY MR. HUNTING:

Q I take it, Mr. Brown, based on your years of experience, that there is no guarantee as to the availability of FAA or other federal funds in the future for airports?

A That's correct.

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# TRIAL TESTIMONY OF PROFESSOR FERDINAND LEVY

[976] Q Would you indicate the scope of your initial review in this case as an economist?

A As an economist I reviewed the *Indianapolis* documents that I was talking about with respect to the theories used in that case for the judges to reach their conclusions which were presented in that case.

Q And are those economic theories rather than legal theories?

A Those were economic and cost accounting theories. Cost accounting to me is applied economics. I should say.

Q And what theories were those in that case that you reviewed as part of the initial scope of your job?

A Those are referred to as by-product theory, joint product theory, transfer pricing theory, interdependence, and theories of how concession revenues fit into those particular boxes.



[977] Q Would you indicate further the scope of your review as you understood it regarding the Buckley methodology principles or theories?

A I was asked to look at the Buckley methodology as a generalized methodology on a cost recovery, cost of service basis and asked to determine whether I believed that would lead to reasonable results in setting prices.

Q Did you become involved in any of the extensive details of the rate study in dispute or the similar historic rate studies?

A No, sir.

Q And can you state generally what the purpose of your review was as it relates to cost accounting, economic theory, use of financial ratios in a general sense, sir?

A I was asked to determine how good economics or good cost accounting—by good, I mean well accepted or well defined in the literature—applies in the Buckley methodology and in setting rates at airports, and I was asked to determine whether certain ratios were useful or applicable in determining performance.

Q Now, would you define for the Court from an economist's point of view the different types of risks that an entity, a person can take?

A We're talking about economic risk, I presume?

Q Yes.

[978] A Because when you cross the street you take a risk. The economists, financial people define two types of risk. They define business risk; that is, a person entering business as to whether they can recover their investment, equivalently as to whether the business will make a profit, how much money they have at risk in that particular business. And the second type of business which—second type of risk which the economists distinguish between is what's called financial risk, and that is when you go into business, you take a risk of investing your money, but you also take a financial risk. The business may be successful, but in order for the business to remain viable it has to repay its debts on time. In other words, it has

to maintain a cash flow to meet its bonded and loan obligations or its stockholder obligations.

So we have two types of risks. Business risk is the ability for a particular business to make a profit or remain viable. Then we have financial risk, or the ability of the business to meet its financial or monetary obligations on time.

Q Could you relate that to some simple example?

A Yes. Many people regard buying a house as a good risk. Buying a house is a business risk in the sense that what you're doing is you're trying to save money on rent or you're looking for appreciation in the value of the house. The risk that you take is, of course, the value of the house will [979] depreciate, you'll have an earthquake and you won't have insurance and so forth. The financial risk that you take when you have a mortgage on the house is that you will buy the house, it will appreciate in value and so forth, that's a business risk, but that you're able to meet your monthly obligations on time or else the bank or the mortgage company will foreclose on you.

Q During the course of your review of documents, did you come to learn that there are essentially two types of airport methodologies, a residual and a so-called cost of service methodology?

A Yes.

Q Would you relate these two types of risks, business risk and financial risk, to the residual methodology and to a cost of service, compensatory, or Buckley methodology, continuing on with your description of these two types of risks?

A Well, let me start with compensatory. In a compensatory methodology as I understand it the airport authority pays and takes a responsibility for building the airport and making the timely payments of its financial obligations on time. So the decision to build the airport, of course, is an economic decision with business risks. How to finance it involves financial risk, how to meet your

obligations on time. So in a compensatory situation the airport takes both a business risk and a financial risk. [980] As far as the airlines are concerned, they, of course, in deciding whether or not to service a particular airport means they're taking a business risk, but they have no financial risk whatsoever in the airport. They can leave the airport and the airport still has to make its financial obligations.

Q All of that description related to the Buckley or the cost of service or the compensatory methodology?

A Compensatory, yes, sir.

Q Would you continue on and provide the same analysis of business risk and financial risk as you understand it would relate to a residual type lease or methodology?

A I understand with a residual type lease that, of course, both the airport authority and the airlines are responsible for the financing and the meeting of financial obligations of the airport, so both have business risk and financial risk. That is, if the airport does not generate enough cash flow to pay the bonded indebtedness, the borrowings, then the airlines and the airport authority, I assume with its taxing mechanism, would have to make up the difference. Therefore, the airlines are taking a financial risk as well as a business risk by deciding to invest in the airport and to service the airport.

\* \* \* \*

[982] BY MR. HUNTING:

Q Let me ask it this way. It will make it simple, sir. Assume that since 1984, this airport has used a Buckley cost of service or compensatory rate-making methodology that, although not embodied in the lease, was used for the purpose of negotiating and determining lease terms. Would you relate that situation to your risk/reward analysis that you provided earlier?

A That means that if the airport were to make profits or returns over and above costs, the airport would be entitled to those returns because they are the people taking

the risk, both the business risk and the financial risk. On the other hand, if the airport were to have a shortfall in cash, not able to meet their obligations, the airport would also have to meet those obligations. So the airport is taking both financial risk and business risk with its compensatory methodology.

Q How do you relate—

A I—

Q Excuse me. Go ahead.

A I was going to answer on the airlines.

Q Okay. Would you take the other side of the equation, and that would be the airlines in a compensatory, Buckley, or cost of service methodology for the recent years in which that has been in use?

[983] A The airlines have basically paid the actual costs of the services and facilities that they use at the airport. If they decide—I haven't seen the lease, but they are only taking the business risk of coming in and out of Grand Rapids. They're not taking any financial risk associated with paying any of the obligations that the airport has incurred. So the airlines have no financial risk at all, only business risk in an economic accounting/financial sense.

Q And would you relate that also to the ability of the airlines not only to leave, but to cut back their service to whatever minimum service they might feel is appropriate?

A I would presume, given whatever it says in the lease, that they're able to leave. From what I've read, for example, in Moody's, airlines want short-term leases, they want flexible leases, they want the ability to change.

Q And with reference to your testimony, would you also relate the airlines' lack of investment in the non-aeronautical activities and facilities that generate that income?

A The airlines are not charged for the concessions or the parking lot and so forth. The airport has taken both business risk and financial risk. They have taken the risk



of building the facilities, that's a business risk, and the risk of paying for them on time in a timely fashion, and that's a financial risk. So the airlines have no investment, financial or [984] business-wise, whatsoever in the concessions.

Q Now, would you indicate what the principles of the Buckley methodology apply to, distinguishing between methods of allocation as between costs, revenues, or any other standards that might be used in your type of work?

A The Buckley methodology is strictly a cost of service methodology in that it is based on actual costs incurred to service a particular user of the facility. Therefore, it is designed to recover costs, for example, of the runways and aprons and the airline terminal part that is used by the airlines from the airlines, and to look at it on a cost-only basis of the concessions revenue from those people who profit from operating concessions at the airport.

Q Are there other completely different types of cost allocation systems that might relate to things other than costs, and would you just give some description of what other types of systems could be used in other circumstances?

A You could use a revenue base. For example, let me give you—you could look at how much revenue the concessions generate at the airport and you could look at how much revenue the airlines generate at the airport. Now, this is not Buckley methodology. This is a methodology out of a textbook, and you could look at the sum of the two and just take the proportion that the concessions generate and charge that to the concessions, take the proportion that the airlines [985] generate and charge that to the airlines. That's one way. You could look at the number of people served. You could ask how many people do the airlines serve and how many people do the concessions serve and you could allocate that way. I could give you an example from this building right here.

\* \* \* \*

[986] Q And would it be fair to say that most cost allocation systems in your experience are either based completely on costs or completely on revenue or completely on some other agreed-upon criteria?

A Yes. Well, there's—there are other criteria. But when you talk about any of the terminology that's been used in this case, there's no such thing as splitting how you allocate costs. It's done in one way, and there are many ways you can do it.

Q Once that way is chosen, it should then be applied consistently throughout as to the people it impacts?

A Yes.

Q Now, would you, with the Court's permission, go to the blackboard and would you demonstrate if you can the Indianapolis cost accounting theories mentioned in the opinions in that case as it relates to multiple products, joint products, and by-products, taking into account both the teaching experience and any actual other experience you've had with such things, sir.

[987] A There is an adage, Never give a teacher a piece of chalk.

Q Well, you've got a time limit, so—

A It's not in *Indianapolis*, but what we're really talking about in this is multiple products or multiple services, and by that I mean a firm produces more than one output. Now, we can split these multiple services and multiple products into two different things, what are called independent products. You don't have to produce them, but you can produce one without the other. A university, for example, produces educational services, they can also run a travel agency business on campus. They don't have to, and lots of universities do because it's a way of making money that we'll talk about later. But you don't have to run a travel agency to run a university.

Now, on the other hand, we have what are called joint products, and those are what are referred to in *Indianapolis*, and joint products are products that have to be produced together in some fixed proportion. Now, this

proportion can vary, but in general they always have to be produced together. The common example given in almost every textbook is if you want to produce leather, you get beef, and if you want to produce beef, you get leather. One cow is so many pounds of beef and so many square feet of leather.

Now, joint products are usually split into two different categories. One is thought of where the products [988] are relatively all-important. That would be beef and leather. At a refinery it could be kerosene and crude oil and gasoline, and then what are called by-products, and by-products, a by-product is a joint product that has relatively insignificant sales value compared to the other products that are being produced.

Now, at a refinery, every refinery that uses catalytic cracking as a way of breaking down crude oil also produces waxes, and waxes are generally regarded as by-products. In the industry I was in, which is producing paper boxes, we print those flat on the sheet and then we cut and crease the boxes and strip away the outside of the sheets, the interconnections among the boxes, and what we do with that is sell it as scrap. Scrap is a by-product. The scrap if you were a jeweler would not be a by-product because the gold that's picked up is a joint product and figured separately.

So there are many different ways of accounting for joint products, many different ways of accounting for independent products. The thing that distinguishes by-products in accounting, in any method of what's called by-products is if the joint products are relatively important together, then we worry about allocating the common cost before the split-off point, before they were identifiable as separate products; before there were beef and leather, that is, let's say, after the steer got killed. By-products, we [989] don't worry about any allocation of cost before the split-off point. And again, there are many ways to account—there are many methodologies to account for by-products. But the point here is that joint

products in any textbook definition, in any managerial accounting textbook definition, have to be produced together. You get one, you get the other. You can't produce electricity without producing steam because we're converting mechanical energy into electrical energy.

Independent products, it's up to the firm what they want to produce. If Georgia Tech—the example to me here is an airport. The airport has to produce airport landing services. It doesn't necessarily have to produce a car rental place or anything like that.

Q Would you continue on and, from an economist's point of view, describe transfer pricing concepts as you understand them either to be in this case or to have been utilized and applied in the earlier *Indianapolis* case?

A Transfer pricing works in a decentralized organization. You decentralize an organization because it's too big to control centrally. For example, General Motors is too big for one person to make all the decisions of how many batteries it should produce both for internal use and external use; how many spark plugs; if it owned a steel mill, I don't know that it does, how much steel it should produce. So they split it into divisions. They might split in into an automotive [990] division, a spark plug division, and so forth. But there's no such thing as transfer pricing without decentralization because if you have centralization, there's no need to worry about how individual units are doing. You're just looking over the whole operation. So we're talking about decentralization, first of all.

On a more global level, the U.S. economy is decentralized. We all make decisions, and the collective action of all of our decisions affects what's produced and how it's priced. The Russian economy, on the other hand, I don't know what it is now, used to be centralized. There's no transfer pricing. All the pricing is set from above.

Now, transfer pricing is used as a way of transferring from one division to another—how much Buick should pay the spark plug division for the spark plugs, how much



they should pay the steel division for steel, how much they should pay the casting division for the motor. There are many different ways to set transfer prices. The idea is to evaluate the way we economists and accountants put it is every tub on its own bottom. We look at the spark plug division, we look at its sales as a profit center, its costs, and ask whether it's making money, and we look at its return on investment. We look at return on investment in the automobile division and so forth. But it basically is only with, as every textbook starts off, it says decentralization/transfer [991] pricing, divisional performance/transfer pricing. It's only used in a decentralized fashion.

Q Would you relate the concept of decentralization to the ownership of the airport for purposes of your recent testimony?

A Well, the airport, the airport is a centralized authority, it seems, where the airport management makes the decisions on what to do and there is no transfer among the particular divisions.

Q You can take the stand again, if you will.

In particular, Professor Levy, I'm going to show you Plaintiff's Exhibit Number 303 and ask you from an economist's point of view whether this particular document does or does not represent any type of split-off chart or split-off presentation as it might relate to by-products, joint products, or multiple products?

A Not that I can see.

\* \* \* \*

Q Is there a single mandatory cost accounting way to deal with either multiple products, joint products, or by-products?

[992] A No. If you pick up any textbook, and I happen to have brought some with me this morning, if you pick up any textbook and you look at joint products, off the top of my head I can think of three ways in general right now to account for joint products, and if I look at by-products, I think the professors' books that I've read, eight, nine, ten different ways to account for by-products,

and independent products or multiple products the same way. There's no unique single unambiguous way to account. It's done for management's convenience in the way they want to handle it.

Q And in this particular instance who do you understand to be management so far as the airport is concerned?

A I presume the airport board or the airport management make the key decisions.

Q Given the scenario of multiple products or services, joint products, and by-products, in your experience is there any cost accounting requirement that concession revenues or non-aeronautical revenues be credited directly or indirectly to the airlines or in any way subtracted from the airlines' costs that may be reflected in landing fees, terminal rental rates, or overnight aircraft parking fees?

A Is there any one—there might be a requirement in the sense that people might sign a lease to that effect. But there's no cost accounting requirement. There's lots of different freedoms, lots of freedom on how to choose the [993] accounting system as long as there's no statutory contractual agreement, which is out of my realm of expertise.

Q Would you, given your review of the Indianapolis Airport Authority case, discuss the doctrine of interdependencies as used in that case regarding the airport, the airlines, and concession revenues, taking into account the experience you've had as an economist in such matters?

A Interdependency and mutual dependency to me are two words that are synonymous, two phrases that are synonymous. If you have two entities, A and B, and they're interdependent, what A does affects B and vice versa. And often things look like that might happen. A affects B and vice versa, but in general, for example, at an airport, the airport is the reason the airlines are there and the airport is the reason the concessions are there, and the only reason the airport is there is to facilitate travel in and out of the particular metropolitan area.

So it's a metropolitan area through its building of the airport that attracts the airlines. They are interdependent on the metropolitan area, as is the concessions. Therefore, they're both dependent on the metropolitan area, and they're not interdependent in the sense of one affects the other. For example, you could cut out all the concessions and you could still have the airport and the airlines.

\* \* \* \*

[995] Q Would you define as an economist the phrase "derived demand?"

A A derived demand is a demand for a product or a service used to help satisfy a final demand. Let me give an example, might work better. Businesses don't want to hire engineers. They want to make products, but they need to hire engineers to make those products and refine them. So they hire engineers in order to satisfy their final demand of making products. Companies don't like to buy airplane tickets, but they buy airplane tickets on airlines in order to send their salesmen to other places to sell their products. So their demand for airline tickets is a derived demand.

Q Would you relate that concept to the airport here, the Kent County International Airport, as it relates to the issues in this case?

A The demand for airline services in and out of Kent County is a derived demand of people, of persons to either go to or leave Grand Rapids. Now, you can think of three major classes of people who use airlines. Those are people who have business either in Grand Rapids or people in Grand Rapids who have business outside of Grand Rapids, and they use airlines to satisfy their demands to handle that business. You have people who go on vacations and use the airlines to do that, [996] either vacationing in Grand Rapids—I don't know. I'm from New Orleans originally. They have Mardi Gras, the Super Bowl. People take airplanes to go to the Mardi Gras and the Super Bowl to visit New Orleans. The same thing

might be true in Grand Rapids. And then you have families visting back and forth in and out of Grand Rapids, and then you have—I don't know if this is business, I might be straining a little bit, government employees and military employees who the government is traveling around. People don't take airplanes for the joy of taking airplanes. They take airplanes to either come into a metropolitan area or leave a metropolitan area.

Q Would you relate that derived demand analysis to the airlines' side of the equation?

A Well, the airlines look at the potential passenger flow into and out of a particular city, here Grand Rapids, and schedule their airlines' airplanes vis-a-vis the financial constraints that they have on number of planes and what have you, other communities, in deciding how to schedule capacity and times of flights in and out of Grand Rapids. But they take the people's demand for travel to and from in deciding how to schedule their flights in and out of Grand Rapids.

Q From an accounting—

A I—

Q Excuse me.

A I was going to say that if this were Waxahatchee, Texas, [997] and they built a beautiful airport and built beautiful runways and the oil industry is dead, they still wouldn't survive because nobody really wants to go in and out of Waxahatchee, Texas. That's a figurative example, not a literal one. You wouldn't have too much airline traffic in and out, either.

Q Would you relate the concept of derived demand, the airport and the airlines' attempt to satisfy that demand or need, for instance, to available seats on an airplane and the number of planes to bring this into some kind of simple example?

A Well, the airlines estimate the demand in and out of Grand Rapids—to other cities. Of course, they're all interrelated. The demand to leave Grand Rapids might be the demand to go to Chicago or Detroit. And then



they look at the number of people, they look at the competition that's already there. You don't start *de novo*, and then they look at the additional market capacity and what prices this capacity should be priced.

Q Can you give some example in terms of your experience as an economist as to what might or might not happen if there was a doubling or tripling of the planes brought into Grand Rapids as it may relate to derived demand and the community involvement in this type of issue?

A Well, I would assume that the airlines are profit maximizers and that at any given time, given the demand for [1998] air travel into Grand Rapids and out of Grand Rapids, given the competitive structure of the market, they are maximizing their profits. That means any reduction, assuming demand stays the same, any reduction in service would lower their profits and any increase in service would lower their profits. Reduction in service would lower their profits because they would be giving up passengers they could carry. The increase in service would also be lowering their profits because it would be providing more capacity than there is demand for.

Q Would you define as an economist the doctrine of economies of scope or scale?

A Those two are entirely different—

Q Let's take scope first.

A Okay. Economies of scope is the ability of a single firm to offer more than one product or service which may or may not be related in use at lesser cost or greater profit than two different firms. A classic example is when you go to the movies, the movie theaters have a popcorn counter. The reason they have a popcorn counter is that's economies of scope. They're able to sell popcorn probably more cheaply than people across the street, or utility of place.

Q Now, would you explain economies of scale?

A Economies of scale is the—suggests that if you double the output, you can do that without doubling the cost.

Q Now, would you apply either of those applicable concepts [1999] to the airport situation as it relates to the non-aeronautical revenues or the concession revenues at the airport?

A Well, the non-aeronautical revenues arise, to me, because of economies of scope. It is the ability of the airport to satisfy the demand for restaurant services, parking services more cheaply and more efficiently than those can be satisfied off of the airport premises. If it were not true, I would presume the airport would not provide those services. There's no reason why they have to provide those services.

Q Are you able to provide any helpful example regarding cost allocation methods on a space basis that you might be able to analogize to the airport or to Buckley or to some of the contentions in this case?

A Space allocation?

Q Yes.

A Well, I think the one we talked about earlier, this Federal Building, which we could divide into United States District Court, the U.S. Post Office, and the Internal Revenue Service based on the amount of space that they take up. If you were to—that's one way to do it. Another way to do it is to say if we built this court and we did it *de novo* separately, how much would it cost, and then if we added on the concessions, how much they—not concessions, the Internal Revenue Service, how much would that cost, and we added the Post Office, how much would that cost. And then, [1000] since they're three different things, we can do it six different ways on a space basis and then average what each one costs. That would be a way of zero-based budgeting which takes into account—doesn't worry about which came first, A, B or C.

Q Can you provide any helpful examples, let's say the sale of automobiles and showroom floor space, in

terms of application to the issue as you understand it, in this case?

A Well, there's an Oldsmobile dealer in Atlanta, Mitchell Motors, that sells Oldsmobiles and it sells Rolls-Royces. I know, I'm the market for Rolls-Royces. But anyway, for simplicity's sake let's assume it sells as many Rolls-Royces as Oldsmobiles. Now, Rolls-Royces are a lot more expensive than Oldsmobiles. I would guess at least five to six times as expensive, and let's assume that they share equally the showroom floor. Now, you can certainly allocate the showroom floor on the basis of the number of square feet that each occupied, or you could allocate another number of how much revenue the Oldsmobile generates and how much revenue the Rolls-Royce generates.

Q Would you come back again and confirm the type of cost allocation approach or methodology that is represented by Buckley?

A Well, Buckley, of course, allocates outside the terminal when it comes to airline landing services the facilities that [1001] are related to the airlines, but inside the terminal it's basically on a functional square footage usage allocated between the concessions and the airlines.

Q How do economists, in your experience, measure the financial performance of an entity?

A Whether it's an entity or an individual, in the performance we look at what we call return on investment, ROI, return on equity, what we own.

Q Professor Levy, do you have an opinion, based on your education, your experience, and your review of the facts of this case and the materials in the *Indianapolis Airport Authority* case as they have been previously described here today, as to whether it is appropriate in this case for the airlines to utilize a ratio of net income to the sales of the airport to maintain that the rates, fees and charges of the airport to the airlines are unreasonable?

A No. I do have an opinion, but I—

Q What is your opinion?

A My opinion is that that's really—I hate to use my students' expression, but that would really be far out. That would be—the return on sales is something that's just not found in accounting, accounting textbooks and cost accounting, or in dictionaries for accountants.

Q And did you in particular make a search of those textbooks and reliable sources of information to find whether there was [1002] any return on sales ratio or approach used and applied in the way in which the airlines have done it in this case?

A Yes, I did.

Q And what did you find?

A Didn't find it mentioned, much less defined.

Q And did you find it applied in any way as you understand it applied in this case?

A No. No, I didn't.

Q Professor Levy, do you have an opinion, based upon your education, your experience, your review of the facts and materials in this case as previously described here today, as to whether, from an economic point of view, the concession revenues should be used to reduce the airline costs at this airport?

A Yes.

Q And what is that opinion, sir?

A That there is really no economic reason for that to occur since the airlines did not take any of the risk of investing in the airport or investing in the concessions; that the risk of the concessions, make it or fail, will be borne by the airport authority.

Q Continuing on, sir, do you have an opinion, based on your education, your experience, and your review of the facts of this case as previously described here today, as to whether it is reasonable from an economic point of view to continue to [1003] allow the airport to retain all concession or all non-aeronautical revenues?

A Yes.



Q And what is that opinion, sir?

A That it certainly sounds reasonable, and the reason is very simple. They bore the risk of building the airport, both business and financial. They bore the risk of putting concession revenues—concession stands there. And the other thing, of course, is it facilitates, since all the revenues have to be used for airport purposes, it facilitates future expansions and enhancements of the facilities and services, and it also provides a wonderful contingency fee for them if something happened, let's hope it doesn't, like what happened in San Francisco in October.

Q Sir, do you have an opinion based on your education, your experience, and your review of the facts of this case as previously described here today as to whether the Buckley cost of service methodology in principle or theory produces reasonable results by way of landing fees, terminal rental rates, and overnight aircraft parking fees?

A Yes.

Q What is that opinion, sir?

A That since it's a cost of service-based methodology, and under the assumption that the costs of the materials and services they purchase are competitively based; that is [1004] there's competition for these, that this would from an economics point of view lead to a competitive, efficient allocation of resources. That is, it would be the cheapest possible way to do something.

Secondly, it is definable to the airport. It is the way—it's the cheapest cost way, it's an economically efficient way, it's basically the way the government does procurement on a competitive cost basis, and it's a way you would come out if you started *de novo* with the cheapest historical costs from what we call a zero-based budgeting to get this. So it's reasonable because it provides the cheapest cost to the airlines, and even more, an economist would look at it from the other way. It's the cheapest cost to society of giving up those resources to build that airport.

\* \* \* \*

[1019] Q Do the rental car companies pay ten percent of their gross to the airport because of the square footage they rent or because they have access to the flow of airline passengers?

A They have access to the people coming into Grand Rapids and the people leaving Grand Rapids. I presume that's an accurate statement of rent. I mean—

\* \* \* \*

[1024] Q Am I correct that during your deposition we talked about the general aviation operation and use of the airfield, and didn't you tell me that you realized that the airlines and the concessions together subsidized the general operation, general aviation operation in the airfield?

A I remember saying that your—I remember the comment reading, and I certainly heard it yesterday, that general aviation does not pay the full cost allocated to it.

Q And that money then comes from the concessions and from the airlines; isn't that correct?

A I would assume it basically comes from the concessions, sir, because the airlines pay the actual cost of their using the airport.

Q Based upon the square footage method of dividing between the various users; is that correct?

A Based upon the Buckley methodology as applied here.

Q And so the concessions, the money that comes from the concessions, I understand the people who ultimately pay that are the airline passengers; is that correct?

[1025] A And the people from Grand Rapids who come to the airport.

Q To pick up passengers?

A Or, as they did on Sunday, to watch the planes come in and out.

Q Or to eat in the restaurant?

A That's correct.

Q And if you eat in the restaurant, don't you get free parking in the airport parking lot?

A I don't know, sir. I've never had a car at the Grand Rapids airport.

Q You didn't check into that; is that correct?

A Yes.

Q Isn't it true that the airport generates customer flow for the rental car companies in part by providing aeronautical services to the airlines?

A Sir, that's a—the answer is the community. The answer is without the airlines there wouldn't be passenger cars there, and without Grand Rapids, sir, there wouldn't be the airlines there. So Grand Rapids generates—just as the rate payers are the eventual payers, sir, in the thing before. Grand Rapids is the eventual provider of the people who rent cars at the airport. It's exactly the same thing, as you said, who ultimately pays.

Q Isn't it true that you said during your deposition that neither Horngren nor Dompke were qualified to testify [1026] concerning the reasonableness of the rates involved?

A That's correct, sir. Neither one were economists, and the idea of reasonableness has to do with efficiency in an economic system. Neither one have Ph.D.s in economics.

\* \* \* \*

## PLAINTIFF'S EXHIBIT 6

### FEES FOR THE USE OF PUBLIC AIRCRAFT

### FACILITIES AND

### RENTAL FOR PASSENGER TERMINAL PREMISES

### KENT COUNTY INTERNATIONAL AIRPORT

### THREE YEARS BEGINNING JANUARY 1, 1987

DECEMBER 31, 1986



**FEES FOR THE USE OF PUBLIC AIRCRAFT  
FACILITIES AND  
RENTAL FOR PASSENGER TERMINAL PREMISES**

Three Years Beginning January 1, 1987

*A. Structure and Level of Rates*

On the basis of the general principles with respect to airport rate-making, and the detailed discussion of rates, fees, rentals, and other charges presented in Section B, C and D inclusive, it is determined that during the three years beginning January 1, 1987, the structure and level of rates at the Kent County International Airport be as follows:

1. For the use of the Landing Area:

- a. By aircraft of a scheduled airline, the appropriate fee for each departure, including the preceding landing, if either be for revenue, expressed in terms of a rate per thousand pounds of maximum allowable gross weight of the aircraft for landing is:

\$.7021

The above charge should include the right to use aircraft loading positions on the Passenger Terminal Apron. There should be no charge for a departure by such aircraft if neither the departure, nor the preceding landing, be for revenue.

2. For space in the Passenger Terminal Building, the annual rental rates per square foot should be as follows:

Type of Space (1)	Rate per Square Foot (2)
Enclosed, Air Conditioned	\$25.46
Enclosed, AC-Heated-Unfinished	12.34

The above rental rates are appropriate only under Agreements and Leases where the Board's responsibility for services does not exceed that shown in Exhibit 10. These rates should be firm and not affected by the volume or the value of the business done by the tenant, where the tenant is a scheduled airline authorized to provide service to Kent County.

In the case of other tenants, the Board should fix the rental rates at such levels, relative to the above, as may be required by the exercise of sound business judgment, including the establishment of minimum guarantees, with the actual rent determined by the minimum guarantee or by a percentage of the volume of the business done by the tenant, whichever be greater.

3. With respect to paved airline aircraft parking,

A rate is established for the use of the paved airline aircraft parking space of 34.32 cents per thousand pounds of maximum allowable gross weight for landing for each eight hours, or fraction thereof, with no free use of such area permitted.

*B. Fees for the Use of the Landing Area*

The Landing Area at the airport is considered to include the runways and taxiways, the passenger terminal apron and the related land required to meet normal clearance requirements related thereto. The break-even need for the landing area, as shown in Exhibit 1, is the sum of the break-even need for the runways and taxiways, and for the passenger terminal apron. This break-even need is as follows:

Annual Break-Even Need of the Landing Area

<u>Landing Area Sub-Areas</u>	<u>Annual Break-Even Need</u>
(1)	(2)
Runways and Taxiways	\$1,183,719
Passenger Terminal Apron	222,877
Freight Terminal Apron	23,007
<b>Total</b>	<b>1,429,603</b>

The costs applicable to each of these sub-areas of the landing area have been accumulated separately because of the portion of their break-even need which should be allocated to each class of use will vary as between them. Each will be discussed individually.

*Passenger Terminal Apron Sub-Area*

The loading positions at the Passenger Terminal Building have been designed primarily on the basis of the requirements of scheduled air carriers. No provision has been made for the use of loading positions on the Passenger Terminal Apron by air taxis and supplementals. Consequently, 100 percent of the break-even need for the Passenger Terminal Apron has been assigned to the scheduled air carrier, and the balance to air taxis and supplementals.

*Public Runways and Taxiways*

The Runways and Taxiways will be used by scheduled air carriers, and by general aviation. The distribution of the break-even need of the Runways and Taxiways as between these types of users are based on a combination of the following factors:

1. The number of aircraft departures in relation to total aircraft departures.
2. The maximum allowable gross weight at take-off of aircraft departing the airport in relation to the maximum allowable gross weight at take-off of all aircraft departing the airport.

The use of aircraft departures to allocate Runway and Taxiway costs bases such an allocation on the airspace capacity, and hence runway capacity utilized.

The use of maximum allowable gross weight at take-off of aircraft lifted from the airport to allocate Runway and Taxiway costs gives recognition to the added costs involved in the provision of airport facilities adequate to handle large airline aircraft. It fails, however, to recognize the fact that the airline operations are with heavy aircraft, and hence use up less airspace and runway capacity in relation to weight lifted than do non-airline civil aircraft operations.

It is considered necessary, therefore, to allocate Runway and Taxiway break-even need on the basis of a formula which gives equal weight both to aircraft departures and to the maximum allowable gross weight at take-off of aircraft lifted from the airport. To achieve such an allocation, forecasts have been made of prospective average annual departures by each type of airport user during the average maximum allowable gross weight at take-off of the aircraft in prospective use by each type of user. The results, from the standpoint of percentage distribution of Runway and Taxiway break-even need, are as follows:



# Distribution of Break-Even Need for Runways and Taxiways

## Average Annual Departures

Type of Operation (1)	Weight			Percent of Total		
	Number (2)	Average (lbs.) (3)	Total (M lbs.) (4)	Departures (5)	Weight (6)	Combined (7)
Scheduled Airlines	22,981	72,754	1,671,960	16.28	73.74	45.01
Other Air Carrier	36	131,700	4,741	.03	.21	.12
Air Taxis	-0-	-0-	-0-	-0-	-0-	-0-
General Aviation	118,151	5,000	590,755	83.69	26.05	54.87
Total	141,168		2,267,456	100.00	100.00	100.00

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## The Landing Area As A Whole

On the basis of the above discussions, it is possible to establish the total annual amount to be recovered from the various airport users and their respective fair shares of the break-even need of the Landing Area. The resulting total break-even need for the Landing Area, and its distribution among users of the Landing Area, are as follows:

Distribution Among Landing Area Users of Landing  
Area Break-Even Need

Item (1)	Distribution Among Landing Area Users			
	Total Amount (2)	Scheduled Airlines (3)	Other Air Carrier (4)	Air Taxis (5)
Break-even need of the Passenger Terminal Apron	\$222,877	222,877	-0-	-0-
Break-even need of the Runways and Taxiways	1,183,719	532,792	1,438	-0-
Break-even need of the Freight Terminal Apron	23,007	23,007	-0-	-0-
Total	\$1,429,603	778,676	1,438	-0-
Add: Cost of Fire Dept.		395,212		
		<u>\$1,173,888</u>		
				650,927

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201

On the basis of the above, the fee which is applicable to the use of the Landing Area by the scheduled airlines during the three years beginning January 1, 1987, is as follows:

1. The scheduled airlines' share of the break-even need of the Landing Area was found to be: \$1,173,888
2. The prospective maximum allowable gross weight for landing of average annual revenue departures by airline aircraft in the rate-making period here under consideration was found to be: 1,671,957,670 lbs.
3. The maximum allowable gross weight for take-off would be: 1,898,000,000 lbs.
4. The fee for the use of the Landing Area by revenue flights of the scheduled airlines, in terms of a rate per thousand pounds of maximum allowable gross weight for landing would therefore be: \$.7021

C. Rental for Space in Passenger Terminal Building

The determination of equitable rental rates for space in the Passenger Terminal Building required consideration of several controlling and limiting factors. These were:

1. The amount of potentially revenue-producing space to be provided.
2. The weight to be given to the variations in cost as between the different types of space provided.
3. The average vacancy for which allowance should be made.
4. Services to be provided by the Aeronautics Board.

Each of these factors will be discussed individually.



### Revenue-Producing Space Provided

The Revenue-Producing Space provided in the Passenger Terminal Building as of January 1, 1984, the beginning of the rate-making period here under consideration, is 108,969 square feet.

### Weight to be Given Variations in Cost

The several varieties of space provided in the Terminal Building makes it necessary to apply proper weighting factors to the various types of space in order to convert the break-even need to an equitable system of rental rates. Weighting factors were assigned to the various types of space provided in the Terminal Building on the basis of construction costs. When the average amount of each type of revenue-producing space available is weighted by the factor indicative of its relative cost, the equivalent basic rental units are as follows:

Determination of Equivalent Basic Rental Units

Type of Space	Average Square Feet To Be Available	Weighting Factor	Equivalent Rental Units
(1)	(2)	(3)	(4)
Enclosed, air conditioned finished	64,853	1.00	64,853
Enclosed, AC-Heat-Unfinished	44,116	.50	22,058
<b>Total</b>	<b>108,969</b>		<b>86,911</b>

### Allowance for Vacancy

No allowance has been made for vacancy in establishing rates per square foot.

### Services to be Provided by the Board

The break-even need developed for the Terminal Building necessarily has been based on definite assumptions as

to the services to be provided by the Aeronautics Board and those to be provided by its tenants. The services provided by the Aeronautics Board in the various types of airline space in the Terminal Building are shown in Exhibit 10.

### Basic Passenger Terminal Building Rentals

The basic rental rates for floor space in the Passenger Terminal Building are rates which cover facilities and services which are made available to any tenant, and exclude any special installations made for a single tenant or for a group of tenants. This has been carried out with respect to the premises occupied by Marriott Corporation by the separate accumulation of break-even need in Line 2-b of Exhibit 1, applicable to special installations and services provided for the use of this tenant. Separate presentation has not been made, however, in Exhibit 1 with respect to the break-even need applicable to the installation and maintenance of Carousels, and the furnishing and operation of Gate Lobbies. These data are as follows:

Break-Even Need Applicable to the Installation and Maintenance of Carousels, and the Furnishing and Operation of Holding and Lounge Rooms

Item	Carousels	Lobbies	Grand Total
(1)	(2)	(3)	(4)
Carrying Charges	\$7,025	\$11,196	\$18,221
O & M—Direct	6,925	-0-	6,925
Related Admin. Exp.	492	784	1,276
<b>Total</b>	<b>\$14,442</b>	<b>\$11,980</b>	<b>\$26,422</b>

In addition to the above total, which should appropriately be deducted from the Passenger Terminal Building break-even need in order to establish the basic rental rates, the Board can expect to receive from the rental of advertising wall space within the Terminal, income which will

not require the use of any floor space. We estimate that during the rate-making period here under consideration, the average annual amount of such income should be approximately \$50,000.

When consideration is given to the factors discussed above, the appropriate basic rental rates for floor space in the Passenger Terminal Building are found to be as follows:

1. Break-even need from Exhibit 1		\$2,277,179
2. Deductions		
a. Carousels and Gate Lobbies	\$26,422	
b. Prospective income from wall space not requiring floor space	50,000	76,422
3. Net to be recovered through space rental		2,200,757
4. The income-producing floor space on which to base the rental schedule was found above to be equivalent, in terms of basic rental units, to		86,911
5. This gives the following average break-even need for each type of potentially revenue-producing floor space available in the Terminal Building:		

Average Break-Even Need for Each Type of Potentially Revenue-Producing Floor Space Available in the Terminal Building

Type of Space	Average Break-Even Need Per Square Foot
(1)	(2)
Enclosed, air conditioned	\$25.32
Enclosed, AC-Heat-Unfinished	12.66

6. It should be noted that the above-established rates are intended to be the full rental charge, other than for ancillary services, for space made available to airlines, other aeronautical interests, and Federal Government; but to be simply minimums against percentages of gross business in the case of space made available to concessionnaires.

### *Recovery of Break-Even Need for Carousels*

To recover the break-even need on the Carousels, it will be necessary to recover both the basic space rental and the average annual charges on the equipment which has been installed. These are as follows:

1. Basic Space Rental		
5,771 square feet of enclosed air conditioned space of \$25.32	\$146,122	
7,972 square feet of enclosed space, unheated, utility finish, at \$12.66	100,925	247,047
2. Charges on Equipment		14,442
Total		\$261,489

### *Recovery of Break-Even Need for Baggage Make-up-area*

1. Basic Space Rental	
15,289 square feet of enclosed space, utility finish at \$12.66	193,559
Total	\$193,559



Distribution of Annual Charges to be Recovered Based on ATA Formula  
(to be recomputed annually)  
Distribution of Costs for 1987

Total Amount to be Recovered	\$455,048
Less:	
Amount received from Supplemental Airlines—1986	-0-
Total Airline Share	<u>\$455,048</u>

Airline	1986	Percent	Baggage Claim		Total	Baggage Mark-Up			Grand Total
	Enplaned Passengers		20%	80%		20%	80%	Total	
West Baggage Area									
American:	84,447	13.68%	\$4,358.15	\$28,610.02	\$32,968.17	\$3,274.24	\$20,369.90	\$23,644.14	\$56,612.30
Express I:	2,955	0.48%	\$4,358.15	\$1,001.13	\$5,359.28	\$3,274.24	\$712.79	\$3,987.03	\$9,346.31
Northwest:	213,336	34.55%	\$4,358.15	\$72,276.65	\$76,634.80	\$3,274.24	\$51,459.88	\$54,734.12	\$131,368.92
Simmons:	25,684	4.16%	\$4,358.15	\$8,701.55	\$13,059.70	\$3,274.24	\$6,195.37	\$9,469.61	\$22,529.31
USAir:	53,648	8.69%	\$4,358.15	\$18,175.54	\$22,533.69	\$3,274.24	\$12,940.71	\$16,214.95	\$38,748.64
Florida Express:	0	0.00%	\$4,358.15	\$0.00	\$4,358.15	\$3,274.24	\$0.00	\$3,274.24	\$7,632.39
Airport:						\$3,274.24		\$3,274.24	\$3,274.24
Total West Passengers	380,070								
					Total	\$22,919.66	\$91,678.66	\$114,598.32	
East Baggage Area									
ComAir:	433	0.07%	\$4,358.15	\$146.70	\$4,504.85	\$2,632.02	\$115.22	\$2,747.23	\$7,252.06
Commuter Express:	0	0.00%	\$4,358.15	\$0.00	\$4,358.15	\$2,632.01	\$0.00	\$2,632.01	\$6,990.16
Midstate:	11,867	1.92%	\$4,358.15	\$4,020.45	\$8,378.60	\$2,632.01	\$3,157.74	\$5,789.75	\$14,168.35
Midway Connection:	0	0.00%	\$4,358.15	\$0.00	\$4,358.15	\$877.34	\$0.00	\$877.34	\$3,235.49
Piedmont:	94,205	15.26%	\$4,358.15	\$31,915.95	\$36,274.10	\$2,632.01	\$25,067.39	\$27,699.41	\$63,973.51
United:	130,886	21.20%	\$4,358.15	\$44,343.20	\$48,701.35	\$2,632.01	\$34,827.99	\$37,460.00	\$86,161.36
Airport:						\$1,754.68		\$1,754.68	\$1,754.68
Total East Passengers	237,391								
Total	617,461	100.00%	\$52,297.80	\$209,191.20	\$261,489.00	\$15,792.08	\$63,168.34	\$78,960.42	\$455,047.74

**D. Break-Even Need for Paved Airline Aircraft Parking**

Yearly Break-Even Need 3 spaces from Exhibit #1	\$28,914
Yearly Break-Even Need 1 space	9,638
Daily Break-Even 1 space	26.40
Break-Even Need Per Space @66 2/3% load factor	39.64
Amount Required Per 1,000 # gross landing weight for each 8 hour period	.32





## EXHIBIT 3

KENT COUNTY DEPARTMENT OF AERONAUTICS  
AVERAGE ANNUAL BREAK-EVEN NEED BY REVENUE PRODUCING AREAS  
THREE YEARS BEGINNING JANUARY 1, 1987

REVENUE PRODUCING AREA (1)	LAND (2)	GENERAL PURPOSE FACILITY (3)	DIRECT ADMINISTRATION INVESTMENT OPER. & MAINT. (4)	(5)	GRAND TOTAL (6)
LANDING AREA					
A. RUNWAY & TAXIWAY	55,122	142,181	279,180	707,236	1,183,719
B. PASSENGER TERM. APRON	2,455	6,324	48,768	165,330	222,877
C. FREIGHT TERM. APRON	27	67		22,913	23,007
SUB TOTAL	57,604	148,572	327,948	895,479	1,429,603
PASSENGER TERMINAL BLDG.					
A. BASIC	294	2,076	827,328	1,447,481	2,277,179
B. MARRIOTT PREMISES	0	0	42,840	0	42,840
SUB TOTAL	294	2,076	870,168	1,447,481	2,320,019
PUBLIC AUTO PARKING					
A. PASSENGER TERMINAL	535	3,760	315,324	367,931	687,550
B. UNIT STORAGE HANGARS	160	1,130	0	21,365	22,655
SUB TOTAL	695	4,890	315,324	389,296	710,205
FREIGHT TERMINAL BLDG.	36	246	68,964	5,796	75,042
AIRCRAFT PARK. & TIE DOWN					
A. AIRLINE AIRCRAFT PAVED	165	1,149	5,160	21,794	28,268
B. GEN. AVIATION PAVED	165	1,149	4,176	38,188	43,678
C. GEN. AVIATION UNPAVED	294	2,075	0	144	2,513
SUB TOTAL	624	4,373	9,336	60,126	74,459
AVIATION FUEL STORAGE	343	2,403	732	762	4,240
FIXED BASE OPERATORS					
A. NORTHERN AIR	611	4,277	21,852	52,204	78,944
B. GRAND AERO	472	3,293	77,964	23,654	105,383
C. SPARTA	107	1,297	0	13,897	15,301
SUB TOTAL	1,190	8,867	99,816	89,755	199,628
RENTAL BUILDINGS					
A. RENTAL BLDG. - AVIS	76	534	11,772	902	13,284
B. RENTAL BLDG. - HERTZ	76	534	13,992	902	15,504
C. RENTAL BLDG. - NAT'L.	76	534	28,536	902	30,048
D. RENTAL BLDG - BUDGET	76	534	35,616	902	37,128
E. MOTEL	334	2,342	76,164	40,947	119,787
SUB TOTAL	637	4,478	166,080	44,555	215,751
OTHER RENTAL LAND	23,711	98,095	0	2,300	124,106
TOTALS	85,134	274,000	1,858,368	2,935,550	5,153,053



KENT COUNTY DEPARTMENT OF AERONAUTICS  
 DEVELOPMENT OF AVERAGE ANNUAL CHARGES ATTRIBUTABLE TO INVESTMENT IN LAND  
 THREE YEARS BEGINNING JANUARY 1, 1987

## EXHIBIT 3

ITEM	INVESTMENTS				NET FOR RATE BASE
	ACRES	ACQUISITION COST	FED. AID	STATE AID	
ACQUISITION TO DATE	2097.21	\$1,765,773	\$597,609	\$0	\$1,168,164
AVERAGE ANNUAL CHARGE @8%					\$93,453
LESS 186.7 ACRES @AMORT OF 8%	186.7				\$8,319
AVERAGE ANNUAL CHARGE AT 8%	1910.51				\$85,134

KENT COUNTY DEPARTMENT OF AERONAUTICS  
DISTRIBUTION OF REVENUE PRODUCING AREAS OF AVERAGE ANNUAL CHARGES  
ATTRIBUTABLE TO INVESTMENT IN LAND  
THREE YEARS BEGINNING JANUARY 1, 1987

EXHIBIT 4

REVENUE PRODUCING AREAS (1)	ACRES (2)	PERCENT (3)	AMOUNT (4)
1. LANDING AREA			
A. Runways & Taxiways	1237	64.75%	\$55,122
B. Passenger Terminal Area	55.1	2.88%	\$2,455
C. Freight Terminal Apron	0.6	0.03%	\$27
Sub Total	1292.7	67.66%	\$57,604
2. PASSENGER TERMINAL BUILDING			
Sub Total	6.6	0.35%	\$294
3. PUBLIC AUTO PARKING			
A. Passenger Terminal	12	0.63%	\$535
B. Unit Storage Hangars	3.6	0.19%	\$160
Sub Total	15.6	0.82%	\$695
4. FREIGHT TERMINAL BUILDING			
Sub Total	0.8	0.04%	\$36
5. AIRCRAFT PARKING AND TIE DOWN			
A. Airline Aircraft - Paved	3.7	0.19%	\$165
B. General Aviation - Paved	3.7	0.19%	\$165
C. General Aviation - Unpaved	6.6	0.35%	\$294
Sub Total	14	0.73%	\$624
6. AVIATION FUEL STORAGE			
A. Sub Total	7.7	0.40%	\$343
7. FIXED BASE OPERATORS			
A. Northern Air Service	13.7	0.72%	\$611
B. Grand Aero	10.6	0.55%	\$472
C. Sparta	2.4	0.13%	\$107
Sub Total	26.7	1.40%	\$1,190
8. RENTAL BUILDINGS			
A. Car Rental Service Bldg. #1	1.7	0.09%	\$76
B. Car Rental Service Bldg. #2	1.7	0.09%	\$76
C. Car Rental Service Bldg. #3	1.7	0.09%	\$76
D. Car Rental Service Bldg. #4	1.7	0.09%	\$76
E. Motel	7.5	0.39%	\$334
Sub Total	14.3	0.75%	\$637
9. OTHER RENTABLE LAND	532.11	27.85%	\$23,711
GRAND TOTAL	1910.51	100.00%	\$85,134



## EXHIBIT 5

KENT COUNTY DEPARTMENT OF AERONAUTICS EXHIBIT 5  
 AVERAGE ANNUAL CHARGE ATTRIBUTABLE TO DEPRECIABLE GENERAL PURPOSE INVESTMENT  
 THREE YEARS BEGINNING JANUARY 1, 1987

Revenue Producing Assets And Direct Depreciable Investment Expenditures	INVESTMENTS			Net For Rate Base	Useful Life (Yrs)	Interest & Amort @ 8%	MONTHLY CARRYING CHARGES		Total Dollars	Begins On	3 YEARS BEGINNING 1-1-86 CARRYING CHARGES		
	Total Cost	Deductions Fed. Aid	State Aid				Periodic Maintenance	Months In Use			Total	Average Annual	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	
ACCESS AND SERVICE ROADS													
ADDITIONS													
Paving	\$183,443	\$13,848	\$40,412	\$109,183	240	0.00837	0.00041	\$1,839	1-1-75	36	\$44,364	\$12,040	
Lighting	\$7,472	-	-	\$7,472	180	0.00954	0.00084	\$77	1-1-75	36	\$1,772	\$494	
with Street Improvements	\$102,139	-	-	\$102,139	240	0.00837	0.00041	\$496	12-1-78	36	\$33,328	\$9,274	
Terminal Road Expansion (C-43)	\$547,791	\$511,812	-	\$35,979	240	0.00837	0.00084	\$153	1-1-87	36	\$18,928	\$4,174	
Roadway Signs (C-44)	\$70,320	\$43,198	-	\$27,122	120	0.01214	0.00084	\$91	1-1-87	36	\$3,274	\$1,092	
Sub-Total	\$1,031,087	\$568,878	\$40,412	\$362,397				\$3,458			\$123,408	\$41,134	
AIRPORT MAINTENANCE CENTER													
New Building C-45	\$1,194,130	\$1,048,842	\$54,382	\$84,926	240	0.00837	0.00084	\$433	1-1-85	36	\$22,840	\$7,628	
Sub-Total	\$1,194,130	\$1,048,842	\$54,382	\$84,926				\$433			\$22,840	\$7,628	
CLEARING, GRADING AND BASIC DRAINAGE													
Original Grading	\$1,540,292	\$498,072	\$349,187	\$1,133,083	360	0.00734	0.00041	\$4,137	11-1-83	36	\$148,932	\$49,844	
Miscellaneous	\$11,785	-	-	\$11,785	360	0.00734	0.00041	\$92	11-1-83	36	\$3,312	\$1,104	
ADDITIONS													
1. Grading	\$2,742,997	\$1,103,441	\$807,903	\$831,653	360	0.00734	0.00041	\$4,409	1-1-74	36	\$237,924	\$79,308	
2. Fencing	\$44,537	\$12,933	\$11,133	\$32,489	120	0.01214	0.00084	\$421	1-1-75	12	\$3,052	\$1,484	
3. Seeding and Landscaping	\$100,124	\$57,940	\$12,150	\$30,124	180	0.00954	0.00041	\$100	1-1-75	36	\$7,100	\$1,400	
Sub-Total	\$4,521,847	\$1,872,358	\$1,200,373	\$1,449,116				\$11,459			\$401,410	\$134,148	
ELECTRICAL DISTRIBUTION SYSTEM													
additions To System	\$3,444	-	-	\$3,444	180	0.00954	0.00084	\$34	1-1-74	36	\$1,794	\$432	
Underground Power Lines	\$84,313	-	-	\$84,313	180	0.00954	0.00084	\$477	1-1-87	36	\$31,372	\$10,124	
Sub-Total	\$87,757	-	-	\$87,737				\$513			\$33,848	\$10,934	
EMERGENCY EQUIPMENT BUILDING													
Original Installation	\$43,341	\$19,874	\$9,940	\$13,527	240	0.00837	0.00084	\$142	1-1-83	-	\$0	\$0	
Relocation of Building	\$199,340	\$189,431	\$14,949	\$14,949	240	0.00837	0.00084	\$138	7-1-84	36	\$4,140	\$1,380	
Sub-Total	\$244,310	\$209,325	\$24,929	\$23,376				\$280			\$4,140	\$1,380	
PLANNING SERVICE													
Revelation Of Master Plan	\$43,041	-	-	\$43,041	120	0.01214	0.00084	\$1,008	1-1-86	36	\$34,280	\$12,094	
Sub-Total	\$43,041	-	-	\$43,041				\$1,008			\$34,280	\$12,094	
SANITARY SEWAGE SYSTEM													
Sanwer Lines	\$49,400	-	-	\$49,400	300	0.00772	0.00084	\$423	11-1-83	36	\$13,308	\$3,180	
addition Lines	\$134,300	-	-	\$134,300	300	0.00772	0.00041	\$1,291	1-1-74	36	\$44,474	\$15,402	
addition Equipment	\$16,474	-	-	\$16,474	180	0.00954	0.00084	\$172	1-1-74	36	\$4,192	\$1,064	
Sanwer Lines (C-123) 1985	\$104,000	-	-	\$104,000	300	0.00772	0.00084	\$1,744	1-1-85	36	\$43,854	\$10,952	
Sub-Total	\$404,174	-	-	\$404,174				\$3,434			\$138,824	\$43,600	

KENT COUNTY DEPARTMENT OF AERONAUTICS EXHIBIT 2  
 AVERAGE ANNUAL CHANGE ATTRIBUTABLE TO DEPRECIABLE GENERAL PURPOSE INVESTMENT  
 THREE YEARS BEGINNING JANUARY 1, 1967

Revenue Producing Assets And Direct Depreciable Investment Therein  (1)	Total Cost  (2)	INVESTMENTS		Net Per Rate Base  (3)	Useful Life (No's) (4)	Interest & Amort @ 6%  (7)	ANNUALLY CARRYING CHARGES		Total Dollars  (9)	Use Began Or Expired On (10)	3 YEARS BEGINNING 1-1-66 CARRYING CHARGES		
		Subventions Fed. Aid  (3)	State Aid  (4)				Periodic Maintenance  (8)	Months In Use (11)			Total  (12)	Average  (13)	
WATER SYSTEM													
Pumphouse	\$19,992	\$0,192	\$0,173	\$7,626	300	0.00772	0.00000	\$43	\$19,992	11-1-63	36	\$1,340	\$788
Water Lines	\$62,736	\$13,973	\$7,113	\$11,648	300	0.00772	0.00001	\$176	\$62,736	11-1-63	36	\$4,336	\$1,113
Completed Additions - Lines	\$190,497	\$3,711	\$1,876	\$184,992	300	0.00772	0.00002	\$1,305	\$190,497	1-1-74	36	\$54,188	\$18,948
C-113 Modify Water Building	\$21,648	—	—	\$21,648	300	0.00772	0.00002	\$176	\$21,648	1-1-63	36	\$4,336	\$1,113
Sub-Total	\$274,883	\$13,887	\$13,160	\$133,836				\$1,912				\$60,192	\$13,864
GRAND TOTALS	\$7,963,851	\$3,844,420	\$1,333,336	\$1,766,193				\$13,379				\$421,000	\$174,000



KENT COUNTY DEPARTMENT OF AERONAUTICS  
DISTRIBUTION OF REVENUE PRODUCING AREA OF AVERAGE ANNUAL CHARGES  
ATTRIBUTABLE TO INVESTMENTS IN LAND  
THREE YEARS BEGINNING JANUARY 1, 1987

EXHIBIT 6

REVENUE PRODUCING AREAS	BASIS				E	GRAND TOTAL
	A	B	C	D		
(1)						
1. LANDING AREA						
A. Runways and Taxiways	\$136,257	\$4,934	\$0	\$990	\$0	\$142,181
B. Passenger Terminal Apron	\$6,061	\$219	\$0	\$44	\$0	\$6,324
C. Freight Terminal Apron	\$64	\$2	\$0	\$1	\$0	\$67
Sub Total	\$142,382	\$5,155	\$0	\$1,035	\$0	\$148,572
2. PASSENGER TERMINAL BUILDING						
Sub Total	\$737	\$27	\$819	\$27	\$466	\$2,076
	\$737	\$27	\$819	\$27	\$466	\$2,076
3. PUBLIC AUTO PARKING						
a. Passenger Terminal	\$1,326	\$48	\$1,489	\$50	\$847	\$3,760
b. Unit Storage Hangars	\$400	\$14	\$447	\$15	\$254	\$1,130
Sub total	\$1,726	\$62	\$1,936	\$65	\$1,101	\$4,890
4. FREIGHT TERMINAL BUILDING						
Sub Total	\$84	\$3	\$99	\$4	\$56	\$246
	\$84	\$3	\$99	\$4	\$56	\$246
5. AIRCRAFT PARKING AND TIE DOWN						
A. Airline Aircraft - Paved	\$400	\$14	\$459	\$15	\$261	\$1,149
B. General Aviation - Paved	\$400	\$14	\$459	\$15	\$261	\$1,149
C. General Aviation - Unpaved	\$737	\$27	\$819	\$27	\$466	\$2,075
Sub Total	\$1,536	\$55	\$1,737	\$57	\$588	\$4,373
6. AVIATION FUEL STORAGE						
Sub Total	\$842	\$30	\$955	\$32	\$544	\$2,403
	\$842	\$30	\$955	\$32	\$544	\$2,403
7. FIXED BASE OPERATORS						
a. Northern Air/AMR	\$1,515	\$55	\$1,700	\$40	\$967	\$4,277
B. Grand Aero Flight Center	\$1,157	\$42	\$1,315	\$31	\$748	\$3,293
C. Sparta Aviation	\$274	\$20	\$620	\$30	\$353	\$1,297
Sub Total	\$2,946	\$117	\$3,635	\$101	\$2,068	\$8,867
8. RENTAL BUILDINGS						
A. Car Rental Bldg. #1	\$189	\$7	\$211	\$7	\$120	\$534
B. Car Rental Bldg. #2	\$189	\$7	\$211	\$7	\$120	\$534
C. Car Rental Bldg. #3	\$189	\$7	\$211	\$7	\$120	\$534
D. Car Rental Bldg. #4	\$189	\$7	\$211	\$7	\$120	\$534
E. Motel	\$821	\$30	\$931	\$31	\$529	\$2,342
Sub Total	\$1,577	\$58	\$1,775	\$59	\$1,009	\$4,478
9. OTHER RENTABLE LAND						
	\$58,606	\$2,113	\$0	\$0	\$37,376	\$98,095
SUB TOTAL	\$58,606	\$2,113	\$0	\$0	\$37,376	\$98,095
GRAND TOTALS	\$210,436	\$7,620	\$10,956	\$1,380	\$43,608	\$274,000

EXPLANATORY NOTES

1. BASIS A INCLUDES ITEMS 1, 3, 6 AND 8 IN EXHIBIT 5 AND IS DISTRIBUTED ON REVENUE ACREAGE.
2. BASIS B INCLUDES ITEM 2 IN EXHIBIT 5 AND IS DISTRIBUTED ON DIRECT DEPRECIABLE INVESTMENT.
3. BASIS C INCLUDES ITEM 4 IN EXHIBIT 5 AND IS DISTRIBUTED ON REVENUE ACREAGE EXCLUDING THE LANDING AREA AND OTHER RENTABLE LAND.
4. BASIS D INCLUDES ITEM 5 IN EXHIBIT 5 AND IS DISTRIBUTED 75% TO THE LANDING AREA AND 25% ON DIRECT DEPRECIABLE INVESTMENT.
5. BASIS E INCLUDES ITEM 7 IN EXHIBIT 5, AND IS DISTRIBUTED ON REVENUE ACREAGE EXCLUDING THE LANDING AREA.

## EXHIBIT 7

WEST COUNTY DEPARTMENT OF AGRICULTURE EXHIBIT 7  
DEVELOPMENT OF REVENUE - PRODUCTION AREAS OF ANNUAL CARRYING  
CHARGES AFTER/AVAILABLE TO REPLACEMENT INVESTMENTS IN INDIVIDUAL FACILITIES  
THREE YEARS BEGINNING JANUARY 1, 1967

2025 FISCAL YEAR ENDING JUNE 30, 1967						MONTHLY CARRYING CHARGES					CARRYING CHARGES 3 YEARS BEGINNING 1-1-66		
Revenue Producing Areas And Street Depreciable Leasehold Interests	Total Cost	INVESTMENT		Net Per Rate Base	Useful Life (No's)	RATES			Total Dollars	Begins On	CARRYING CHARGES		
		Federal Aid	State Aid			Interest & Amort @ 6%	Periodic Maintenance	Months In Use			Total	Average	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	
LANDING AREA, SEWERAGE AND TAXIDAYS													
Taxway Paving	\$31,663.00	\$13,099.00	\$14,317.00	\$14,317.00	240	0.00037	0.00042	\$134	9-1-66	36	\$1,304	\$740	
Access Taxway Paving	\$13,340.00	\$9,341.00	\$9,916.00	\$7,301.00	240	0.00037	0.00042	\$64	11-1-68	36	\$1,304	\$740	
Runway & Taxway Paving C-14	\$2,350,300.00	\$1,633,340.00	\$794,870.00	\$799,870.00	240	0.00037	0.00042	\$7,831	1-1-74	36	\$131,114	\$46,373	
Runway & Taxway Lighting	\$419,823.00	\$221,332.00	\$92,101.00	\$106,090.00	120	0.00934	0.00042	\$1,103	1-1-74	36	\$19,700	\$13,134	
Relocation Of Localizer	\$39,333.00	\$19,613.00	\$9,906.00	\$9,916.00	240	0.00037	0.00042	\$64	1-1-74	36	\$1,340	\$1,000	
Overlay 18-34	\$123,280.00	\$101,641.00	\$11,370.00	\$11,349.00	240	0.00037	0.00042	\$100	4-1-61	36	\$1,600	\$1,194	
Extend Runway 18-34	\$4,071,350.00	\$4,830,430.00	\$217,003.00	\$913,133.00	240	0.00037	0.00042	\$8,044	1-1-61	36	\$209,504	\$70,310	
Relocate Thermopile River Dr.	\$472,049.00	\$131,090.00	-	\$140,139.00	240	0.00037	0.00042	\$1,133	1-1-61	36	\$44,332	\$14,704	
Fencing & ALS	\$30,091.00	\$43,011.00	-	\$3,910.00	120	0.00934	0.00042	\$31	1-1-61	36	\$1,673	\$424	
Electric Gates	\$41,300.00	\$73,143.00	-	\$4,144.00	120	0.01714	0.00042	\$104	1-1-61	36	\$1,014	\$1,171	
Fencing 246	\$33,014.00	\$47,314.00	-	\$3,310.00	120	0.00934	0.00042	\$33	1-1-61	36	\$1,900	\$440	
Fencing South Property Line	\$44,101.00	\$41,374.00	-	\$4,610.00	120	0.00934	0.00042	\$44	1-1-61	36	\$1,710	\$370	
Barbwire (Not Runway)	\$930.00	-	-	\$930.00	240	0.00037	0.00042	\$8	1-1-61	36	\$100	\$74	
Fence 08	\$174,449.00	\$130,004.00	\$4,811.00	\$4,873.00	120	0.00934	0.00042	\$91	1-1-61	36	\$1,374	\$1,093	
Grass 18-34	\$123,794.00	\$111,414.00	\$4,190.00	\$4,190.00	120	0.01214	0.00042	\$70	1-1-61	36	\$1,000	\$914	
View Fillets C-14	\$386,647.00	\$347,002.00	\$19,333.00	\$19,332.00	240	0.00037	0.00042	\$170	11-1-63	36	\$4,130	\$1,040	
Taxway Hold Signs C-31	\$234,394.00	\$210,935.00	\$11,710.00	\$11,710.00	120	0.00934	0.00042	\$123	1-1-66	36	\$4,392	\$1,444	
View Taxway Fillets C-14	\$178,754.00	\$153,499.00	\$200.00	\$14,039.00	240	0.00037	0.00042	\$140	1-1-66	36	\$3,314	\$1,774	
C-14 Extend Taxway "V" (1966)	\$2,314,914.00	\$2,143,432.00	-	\$231,493.00	240	0.00037	0.00042	\$2,000	1-1-66	36	\$113,340	\$37,000	
Fire access Roads (1964)	\$144,091.00	\$130,223.00	-	\$14,449.00	240	0.00037	0.00042	\$127	1-1-66	36	\$4,371	\$1,534	
C-14 Overlay Runway 18/34 & Taxway "J" 1966	\$440,979.00	\$440,001.00	\$14,444.00	\$24,450.00	240	0.00037	0.00042	\$713	1-1-66	36	\$7,740	\$1,500	
C-19 Taxway & Runway Lighting (1967)	\$78,119.00	\$70,397.00	\$3,910.00	\$3,912.00	120	0.00934	0.00042	\$40	1-1-67	36	\$1,440	\$400	
C-70 Taxway & Runway Lighting (1967)	\$100,443.00	\$90,417.00	-	\$10,044.00	120	0.00934	0.00042	\$104	1-1-67	36	\$1,744	\$1,240	
C-71 Runway Sensor System (1967)	\$104,743.00	\$45,307.00	-	\$109,478.00	120	0.00934	0.00042	\$1,129	1-1-67	36	\$4,004	\$13,040	
Sub-Total	\$14,401,309.00	\$12,471,301.00	\$1,354,005.00	\$2,409,003.00				\$23,391			\$427,540	\$279,180	
LANDING AREA-FACILITIES & PRE TERMINAL APRON													
Apron Paving C-14 C-33	\$340,371.00	\$180,312.00	\$140,106.00	\$140,134.00	240	0.00037	0.00042	\$1,123	1-1-74	36	\$44,300	\$14,794	
Apron Lighting	\$49,334.00	\$44,642.00	-	\$44,642.00	120	0.00934	0.00042	\$43	1-1-74	36	\$14,740	\$5,500	
Expend East Ramp C-33	\$1,319,614.00	\$1,187,474.00	\$14,134.00	\$113,914.00	240	0.00037	0.00042	\$1,018	1-1-66	36	\$34,440	\$12,534	
Lighting -C 34	\$178,429.00	\$160,393.00	-	\$17,044.00	120	0.00934	0.00042	\$100	1-1-66	36	\$4,000	\$2,171	
West Ramp Expansion	\$444,001.00	\$419,497.00	\$22,347.00	\$34,007.00	240	0.00037	0.00042	\$211	1-1-66	36	\$7,304.00	\$2,531.00	
C-70 Apron Paving-West (1967)	\$1,794,393.00	\$1,143,134.00	\$29,439.00	\$99,819.00	240	0.00037	0.00042	\$477	1-1-67	36	\$31,375.00	\$10,334.00	
C-70 Apron Lighting-West (1967)	\$13,122.00	\$12,629.00	-	\$2,513.00	120	0.00934	0.00042	\$24	1-1-67	36	\$936.00	\$313.00	
C-74 Electric Gates (1967)	\$11,478.00	\$10,313.00	-	\$1,347.00	60	0.07403	0.00042	\$40	1-1-67	36	\$1,734.00	\$374.00	
Sub-Total	\$11,954,914.00	\$11,000,434.00	\$200,114.00	\$447,144.00				\$4,000			\$144,304.00	\$48,740.00	



SEPT COUNTY DEPARTMENT OF ADMINISTRATION      SUMMARY ?  
DEVELOPMENT OF REVENUE - PASSENGER AREAS OF AIRPORT CAMPAIGN  
CHARGES ATTRIBUTABLE TO REPLICABLE IMPROVEMENTS IN INDIVIDUAL FACILITIES  
THREE YEARS BEGINNING JANUARY 1, 1967

Page 4 of 4

THREE YEARS BEGINNING JANUARY 1, 1967				MONTHLY CAMPAIGN CHARGES							3 YEARS BEGINNING 1-1-66		
Revenue Producing Areas And Direct Reproducible Improvement Therein (1)	Total Cost (2)	IMPROVEMENTS		Net Per Rate Base (3)	Useful Life (Yrs) (4)	Interest & Amort @ 6% (7)	PAID		Total Dollars (9)	Began On Beginning On (10)	CAMPAIGN CHARGES		
		Fed. Aid (5)	State Aid (6)				Periodic Maintenance (8)	Month (11)			Total (12)	Average (13)	
PASSENGER TERMINAL BUILDING													
A. Original Terminal Building	\$1,686,787	—	—	\$1,686,787	360	0.00736	0.00000	\$12,781	11-1-63	36	\$496,116	\$13,772	
B. Terminal Building Addition	\$2,371,500	—	—	\$2,371,500	360	0.00736	0.00000	\$21,935	1-1-74	36	\$757,140	\$21,032	
C. Terminal Building Porling	\$236,311	—	—	\$236,311	360	0.00037	0.00000	\$2,199	1-1-74	36	\$79,166	\$2,199	
D. Ticket Wing Expansion	\$90,591	—	—	\$90,591	360	0.00736	0.00000	\$741	12-1-78	36	\$26,674	\$7,380	
E. Recarpet Terminal Building	\$140,443	—	—	\$140,443	120	0.01214	0.00000	\$1,873	1-1-67	36	\$61,410	\$1,874	
F. Terminal Building Addition (C-62)	\$4,471,000	\$1,297,036	—	\$3,173,964	360	0.00736	0.00000	\$12,979	1-1-67	36	\$474,950	\$13,194	
G. Gate Lobby Furniture (B-3, B-4)	\$34,466	—	—	\$34,466	60	0.0103	0.00000	\$771	1-1-67	36	\$27,756	\$7,153	
H. Baggage Carrousel #3 (C-62)	\$90,000	\$45,100	—	\$45,100	120	0.01214	0.00000	\$564	1-1-67	36	\$21,096	\$7,871	
I. Signs (C-6a)	\$243,640	\$71,843	—	\$71,843	120	0.01214	0.00000	\$933	1-1-67	36	\$33,332	\$12,184	
J. Terminal Area Seating				\$3,127	60	0.0203	0.00000	\$110	1-1-67	36	\$3,940	\$1,330	
COMPLETED IMPROVEMENTS													
1. Restroom Modifications	\$7,817	—	—	\$7,817	360	0.00736	0.00000	\$66	10-1-60	36	\$2,306	\$746	
2. Carpeting	\$13,000	—	—	\$13,000	96	0.01414	0.00000	\$175	4-1-61	36	\$13,300	\$4,500	
3. Carpeting	\$14,949	—	—	\$14,949	96	0.01414	0.00000	\$223	9-1-61	36	\$4,100	\$7,700	
4 Northwest Office Space	\$12,710	—	—	\$12,710	360	0.00736	0.00000	\$180	12-1-61	36	\$4,694	\$1,171	
5 Office Space in Ticket Wing	\$3,430	—	—	\$3,430	360	0.00037	0.00000	\$13	12-1-62	36	\$1,153	\$366	
6 New Room Carpet Installation	\$4,300	—	—	\$4,300	96	0.01414	0.00000	\$45	1-1-63	36	\$1,340	\$700	
7. Conference R. Office	\$3,326	—	—	\$3,326	360	0.00037	0.00000	\$49	12-1-62	36	\$1,746	\$300	
Sub-Total	\$9,543,140	—	—	\$9,543,140				\$46,764			\$1,461,906	\$417,318	
PASSENGER TERMINAL OUTSIDE-PASSENGER PREMISES													
Additions To Original Equipment	\$379,717	—	—	\$379,717	360	0.00037	0.00000	\$1,097	1-1-70	36	\$123,892	\$41,946	
Exhaust System Kitchen	\$7,830	—	—	\$7,830	360	0.00037	0.00000	\$73	9-1-61	36	\$1,618	\$474	
Sub-Total	\$387,547	—	—	\$387,547				\$1,170			\$125,510	\$42,420	
PUBLIC AREA PARKING - PASSENGER TERMINAL													
Paving	\$114,506	—	—	\$114,506	360	0.00037	0.00000	\$1,007	1-1-74	36	\$26,121	\$12,006	
Lighting	\$23,730	—	—	\$23,730	180	0.00950	0.00000	\$126	1-1-74	36	\$8,400	\$1,871	
Maneuvering	\$8,131	—	—	\$8,131	360	0.00037	0.00000	\$73	1-1-74	36	\$3,302	\$864	
Ground Addition To Parking Lot	\$207,816	—	—	\$207,816	360	0.00037	0.00000	\$1,416	12-1-78	36	\$43,730	\$11,913	
Employee Parking Lot	\$196,713	—	—	\$196,713	360	0.00037	0.00000	\$1,713	11-1-60	36	\$41,422	\$10,364	
Overflow Parking Lot	\$205,115	—	—	\$205,115	360	0.00037	0.00000	\$1,806	12-1-63	36	\$40,044	\$11,140	
C-123 100 Car Expansion Paving	\$109,700	—	—	\$109,700	360	0.00037	0.00000	\$979	1-1-60	36	\$13,664	\$12,140	
C-123 Lights For 100 Car	\$4,000	—	—	\$4,000	120	0.00950	0.00000	\$41	1-1-60	36	\$1,676	\$495	
C-127 Expanded East Lot Paving	\$314,842	—	—	\$314,842	360	0.00037	0.00000	\$1,957	12-1-65	36	\$142,422	\$47,406	
C-127 Expanded East Lot Lighting	\$38,422	—	—	\$38,422	180	0.00950	0.00000	\$114	12-1-65	36	\$18,304	\$4,140	
C-129 Toll Booth & Equipment	\$12,000	—	—	\$12,000	120	0.01214	0.00000	\$136	12-1-65	36	\$3,618	\$1,871	
C-43 1967 Make Parking	\$1,879,300	—	—	\$1,879,300	360	0.00037	0.00000	\$9,410	1-1-67	36	\$230,740	\$112,900	
C-123 1965 Expanded East Lot	\$90,300	—	—	\$90,300	360	0.00037	0.00000	\$873	1-1-65	36	\$21,428	\$18,474	
C-127 1968 Expanded East Lot	\$176,842	—	—	\$176,842	360	0.00037	0.00000	\$2,796	1-1-66	36	\$110,506	\$30,120	
C-48 Signs (1967)	\$24,470	—	—	\$24,470	120	0.00736	0.00000	\$440	1-1-67	36	\$16,054	\$3,102	
Sub-Total	\$2,817,436	—	—	\$2,817,436				\$24,377			\$942,972	\$213,306	

JOINT CHIEF OF STAFF DEPARTMENT OF AERONAUTICS  
DEVELOPMENT OF REVENUE - FUNDING AREAS OF AIRMAIL CARRIER  
CHARGES ATTRIBUTABLE TO SUSPICABLE EXPENDITURES IN INDIVIDUAL FACILITIES  
THREE YEARS BEGINNING JANUARY 1, 1967

PAGE 3 OF 4

THREE YEARS BEGINNING JANUARY 1, 1967				PROPERTY CARRIER CHARGES							3 YEARS BEGINNING 1-1-66 CARRIER CHARGES		
Revenue Producing Areas And Direct Depreciable Investment Thesis	Total Cost	EXPENDITURES Substantive Pub. Aid	State Aid	Net Per Rate Base	Goodwill Life (No's)	Interest & Amort. 9 0/0	Periodic Maintenance	Total Dollars	Began On Engine On	Months In Use	Total	Average Annual	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	
(F) FREIGHT TERMINAL BUILDING (HOFER)													
A. Building	\$222,347	—	—	\$222,347	300	0.00772	0.00000	\$1,900	1-1-71	36	\$60,300	\$17,000	
B. Porling	\$12,347	—	\$12,831	\$17,406	340	0.00017	0.00000	\$123	1-1-71	36	\$5,300	\$1,400	
FREIGHT BUILDING (HOFER)													
C-124 Building (1963)	\$251,963	—	—	\$251,963	300	0.00772	0.00000	\$1,137	1-1-65	36	\$77,657	\$21,000	
C-124 Porling (1963)	\$96,374	—	—	\$96,374	340	0.00017	0.00000	\$667	1-1-65	36	\$30,495	\$10,100	
C-124 Lighting (1963)	\$12,399	—	—	\$12,399	100	0.00956	0.00000	\$129	1-1-65	36	\$6,044	\$1,500	
C-124 North Building	\$44,337	—	\$4,412	\$44,913	300	0.00772	0.00000	\$156	1-1-65	36	\$20,016	\$6,671	
Sub-Total	\$223,814	—	\$13,831	\$443,814				\$3,747			\$104,002	\$40,944	
(G) AIRCRAFT PARKING - PAYED AIRLINE AIRCRAFT													
A. Porling	\$193,093	\$97,481	\$48,741	\$48,871	340	0.00017	0.00000	\$430	1-1-74	36	\$13,400	\$3,100	
B. Addition													
Sub-Total	\$193,093	\$97,481	\$48,741	\$48,871				\$430			\$13,400	\$3,100	
(H) AIRCRAFT PDC - PAYED GEN AVIATION AIRCRAFT													
A. Porling	\$78,941	\$25,791	\$17,773	\$17,873	340	0.00017	0.00000	\$130	1-1-73	36	\$5,600	\$1,000	
B. Lighting	\$4,874	\$4,430	\$1,119	\$1,119	100	0.00956	0.00000	\$13	1-1-73	36	\$950	\$274	
C. C-48 Overlay Co. Agreements (1964)	\$100,449	\$343,602	\$19,833	\$19,836	340	0.00017	0.00000	\$167	1-1-67	36	\$4,813	\$1,000	
Sub-Total	\$400,404	\$301,121	\$39,917	\$39,120				\$340			\$12,320	\$4,174	
(I) AVIATION FUEL STORAGE AREA													
A. Completed Addition - Porling	\$12,043	—	\$4,173	\$4,091	340	0.00017	0.00000	\$41	1-1-74	36	\$2,194	\$730	
(J) F.B.O. - HENDERSON AIR SERVICE													
A. Original Installation-Porling	\$49,170	—	—	\$49,170	340	0.00017	0.00000	\$433	12-1-63	36	\$13,300	\$3,190	
B. Addition-Line Office	\$40,000	—	—	\$40,000	300	0.00772	0.00000	\$162	5-1-61	36	\$12,340	\$4,110	
C. Additional Unit Sengars													
1. Buildings	\$73,736	—	—	\$73,736	300	0.00772	0.00000	\$621	12-1-63	36	\$23,736	\$7,373	
2. Porling	\$73,603	—	—	\$73,603	340	0.00017	0.00000	\$640	12-1-63	36	\$16,906	\$4,900	
Sub-Total	\$236,001	—	—	\$236,001				\$2,053			\$45,326	\$21,001	
(K) F.B.O. GRASS AND PLYWOOD CENTER													
A. Main Sengars	\$344,441	—	—	\$344,441	300	0.00772	0.00000	\$3,131	1-1-73	36	\$133,334	\$37,400	
B. Main Sengars Porling	\$112,409	—	—	\$112,409	340	0.00017	0.00000	\$990	1-1-73	36	\$35,040	\$11,000	
C. Unit Sengars	\$173,433	—	—	\$173,433	300	0.00772	0.00000	\$1,301	1-1-73	36	\$24,000	\$10,013	
D. Unit Sengars - Porling	\$100,730	—	—	\$100,730	340	0.00017	0.00000	\$403	1-1-73	36	\$21,000	\$10,600	
Sub-Total	\$731,313	—	—	\$731,313				\$6,407			\$133,000	\$77,000	

KING COUNTY DEPARTMENT OF AERONAUTICS      EXHIBIT 7  
DEVELOPMENT OF REVENUE - PROPOSING AREAS OF AIRPORT CARRIAGE  
CHARGES ATTRIBUTABLE TO DEPRECIABLE INVESTMENTS IN INDIVIDUAL FACILITIES  
THREE YEARS BEGINNING JANUARY 1, 1967

CARRIAGE CHARGES												
3 YEARS BEGINNING 1-1-66												
CARRIAGE CHARGES												
MONTHLY CARRIAGE CHARGES												
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## EXHIBIT 9

East Coast Department of Aeronautics  
Prospective Expenses of Operations Maintenance and Administration  
Their Distribution by Revenue. Predominant Cost Areas  
Three Years Beginning January, 1948

Exhibit 9

Item	Landing Area					Passenger Terminal Bldg.	Public Passenger Terminal	Parking Unit Bldg.	Freight Terminal Bldg.	Fuel Gen. Avia.	Repairs Gen. Avia.	Pool Storage	Barbours Air	Grand Avia.	Sports	Car Rental	Hotel	Rentable Land
	Total Amount	Runway & Taxiways	Per. Term Apron	Freight Term Apron	Total													
8) Lighting Supplies	\$13,300.00	\$4,571.00	\$739.00		\$7,300.00	\$4,571.00	\$739.00		\$107.00									
9) Other Supplies	\$47,000.00	\$17,730.00	\$2,513.00		\$30,230.00	\$17,730.00	\$2,513.00		\$795.00	\$304.00	\$304.00							\$195.00
10) Equipment Repairs and Maint.	\$40,000.00					\$24,730.00	\$2,305.00											
11) Vehicle Repairs and Maint.	\$100,000.00	\$41,790.00	\$15,300.00	\$700.00	\$78,290.00		\$4,400.00	\$1,400.00		\$1,400.00	\$1,300.00			\$7,000.00	\$1,000.00	\$7,000.00		\$070.00
12) Janitorial Supplies	\$13,000.00					\$11,400.00				\$600.00								
13) Vehicle Operating Supplies	\$200.00	\$130.00	\$130.00	\$1.00	\$431.00		\$11.00	\$30.00		\$10.00	\$42.00			\$16.00	\$16.00	\$16.00		\$4.00
14) Firefighting Supplies	\$4,000.00	\$1,250.00	\$440.00	\$9.00	\$4,000.00	\$219.00	\$13.00	\$13.00	\$13.00	\$10.00	\$29.00		\$4.00	\$130.00	\$40.00	\$40.00	\$33.00	\$174.00
15) Gas, Oil and Grease \$7,000 less retch. \$0.00	\$7,000.00	\$13,943.00	\$4,027.00	\$70.00	\$30,040.00		\$341.00	\$943.00		\$943.00	\$1,941.00			\$734.00	\$734.00	\$734.00		\$300.00
16) Uniforms - 6400 Less Finance - 1500 A) Safety Officers B) Maintenance C) Packing Lot	\$7,300.00 \$1,300.00 \$400.00	\$114.00 \$164.00 \$164.00	\$164.00 \$164.00 \$164.00	\$51.00 \$51.00 \$51.00	\$331.00 \$735.00 \$400.00	\$1,339.00 \$735.00 \$400.00	\$22.00 \$343.00 \$400.00	\$11.00 \$13.00 \$13.00	\$13.00 \$13.00 \$13.00	\$17.00 \$17.00 \$17.00	\$14.00 \$14.00 \$14.00		\$3.00 \$44.00 \$44.00	\$33.00 \$33.00 \$33.00	\$33.00 \$33.00 \$33.00	\$21.00 \$21.00 \$21.00	\$27.00 \$27.00 \$27.00	
Sub-Total	\$4,100.00	\$114.00	\$164.00	\$51.00	\$331.00	\$1,339.00	\$1,167.00	\$11.00	\$13.00	\$17.00	\$14.00		\$3.00 \$44.00 \$44.00	\$33.00 \$33.00 \$33.00	\$33.00 \$33.00 \$33.00	\$21.00 \$21.00 \$21.00	\$27.00 \$27.00 \$27.00	
17) Repairs and Maint. Airfield	\$40,000.00	\$14,400.00	\$4,800.00	\$4,800.00	\$40,000.00													
18) Rentals of Equipment	\$3,000.00					\$4,000.00	\$400.00											
19) Employees Training and Improv.	\$4,000.00	\$201.00	\$299.00	\$100.00	\$400.00	\$1,700.00	\$40.00	\$30.00	\$45.00	\$33.00	\$25.00		\$3.00 \$118.00 \$118.00	\$30.00 \$30.00 \$30.00	\$30.00 \$30.00 \$30.00	\$33.00 \$33.00 \$33.00	\$133.00 \$133.00 \$133.00	
20) Taxes - Other	\$1,100.00					\$1,100.00												
21) Refunds	\$200.00					\$200.00												
22) Insurance	\$17,000.00	\$104,691.00	\$13,300.00	\$4,021.00	\$134,000.00	\$30,107.00	\$1,977.00	\$200.00	\$43.00	\$407.00	\$1,131.00			\$11,139.00	\$3,430.00	\$3,430.00	\$04.00	\$13,000.00
23) Total Direct Expenses	\$1,179,434.00	\$337,130.00	\$111,907.00	\$19,374.00	\$478,733.00	\$1,050,411.00	\$109,115.00	\$13,000.00	\$3,799.00	\$13,400.00	\$14,344.00	\$0.30	\$475.00 \$33,330.00 \$33,330.00	\$18,397.00 \$18,397.00 \$18,397.00	\$13,304.00 \$13,304.00 \$13,304.00	\$2,430.00 \$2,430.00 \$2,430.00	\$31,026.00 \$31,026.00 \$31,026.00	
Allowance For Replacement																		
1) Vehicles	\$79,071.00	\$11,414.00	\$3,324.00	\$30.00	\$14,571.00		\$1,344.00	\$337.00	\$329.00		\$1,044.00			\$403.00	\$301.00	\$301.00		\$140.00
2) Other Buildings & Equipment	\$7,300.00	\$1,000.00	\$257.00	\$3.00	\$2,571.00	\$4,075.00	\$4.00											
3) Furnishings	\$30,221.00					\$30,221.00												
Total Allowance For Replacement	\$117,592.00	\$12,414.00	\$3,581.00	\$33.00	\$17,542.00	\$14,590.00	\$1,348.00	\$337.00	\$329.00		\$1,044.00			\$403.00	\$301.00	\$301.00		\$140.00
GRAND TOTAL	\$1,297,026.00	\$349,544.00	\$115,488.00	\$22,717.00	\$496,275.00	\$1,165,001.00	\$110,463.00	\$13,337.00	\$3,799.00	\$14,444.00	\$15,388.00	\$0.30	\$923.00 \$34,360.00 \$34,360.00	\$18,804.00 \$18,804.00 \$18,804.00	\$13,608.00 \$13,608.00 \$13,608.00	\$2,771.00 \$2,771.00 \$2,771.00	\$32,172.00 \$32,172.00 \$32,172.00	

East County Department of Aeronautics  
Prospective Expenses of Operations Maintenance and Administration  
Their Distribution by Revenue. Producing Cost Areas  
Three Years Beginning January, 1968

## Exhibit 9

East County Department of Aeronautics  
Prospective Expenses of Operations Maintenance and Administration  
Their Distribution by Revenue. Producing Cost Areas  
Three Years Beginning January, 1968

Item	Total Amount	Landing Area Runway & Taxiways	Pass. Term Apron	Freight Term Apron	Total	Passenger Terminal Bldg.	Public Passenger Terminal	Parking Unit Bldg.	Freight Terminal Bldg.	Airline	Fixed Con. Avia.	Unfixed Con. Avia.	Aviation Fuel Storage	FBO Barbers Air	Operations Grand Aero.	Rental Car Rental	Bldg. Hotel	Other Rentable Land
<b>Direct Expenses</b>																		
1) Salaries and Wages																		
A) Maintenance	\$307,571.00	\$133,947.00	\$37,431.00	\$444.00	\$172,094.00	\$80,820.00	\$14,404.00	\$5,305.00		\$4,123.00	\$11,933.00			\$4,920.00	\$1,475.00	\$3,474.00		\$1,900.00
B) Parking Attendants	\$134,390.00						\$134,390.00											
C) Airport Safety	\$111,527.00	\$10,374.00	\$15,045.00	\$5,380.00	\$31,799.00	\$140,000.00	\$1,411.00	\$1,050.00	\$1,300.00	\$1,700.00	\$1,333.00		\$112.00	\$7,747.00	\$4,801.00		\$1,019.00	\$8,140.00
D) Fireman																		
Sub-Total	\$453,488.00	\$144,321.00	\$53,296.00	\$5,924.00	\$203,731.00	\$220,820.00	\$153,795.00	\$6,355.00	\$2,300.00	\$7,823.00	\$13,266.00		\$112.00	\$14,667.00	\$6,276.00	\$3,474.00	\$1,819.00	\$9,739.00
2) Side Benefits																		
A) Maintenance	\$40,718.00	\$29,931.00	\$8,364.00	\$144.00	\$38,439.00	\$17,083.00	\$3,404.00	\$1,130.00		\$1,368.00	\$2,647.00			\$1,344.00	\$777.00	\$774.00		\$350.00
B) Parking Attendants	\$32,737.00						\$32,737.00											
C) Airport Safety	\$33,831.00	\$1,093.00	\$4,039.00	\$1,344.00	\$8,476.00	\$37,404.00	\$434.00	\$160.00	\$410.00	\$430.00	\$339.00		\$34.00	\$1,974.00	\$611.00	\$611.00	\$443.00	\$1,073.00
D) Fireman																		
Sub-Total	\$107,286.00	\$31,024.00	\$12,403.00	\$2,792.00	\$46,219.00	\$54,497.00	\$37,835.00	\$2,699.00	\$810.00	\$1,828.00	\$3,004.00		\$34.00	\$3,312.00	\$1,388.00	\$1,387.00	\$443.00	\$2,421.00
3) Gas																		
A) For Heat & Air Conditioning	\$155,400.00					\$155,400.00												
173.000 Less -17.600 Reimb. Town																		
4) Electricity																		
A) Public Use	\$119,000.00	\$17,730.00	\$4,953.00	\$60.00	\$22,743.00	\$181,254.00	\$12,400.00	\$131.00		\$348.00	\$718.00			\$414.00	\$109.00	\$109.00		\$94.00
390.500 Less Reimb. 190.000																		
+19,500 Maint.																		
5) Water & Sewage																		
A) Purchase	\$18,000.00					\$18,000.00												
B) Repairs	\$7,423.00					\$7,423.00												
Sub-Total	\$25,423.00					\$25,423.00												
6) Service Contracts																		
Other Contract Services	\$273,490.00					\$207,030	\$45,460											
						\$0.00	\$0.00											
Less Reimb. Janitorial																		
Airline	\$3,079.74																	
Town	\$9,500.01																	
Hot'l Weather	\$1,130.00																	
G.A.B.O.	\$3,600.00																	
7) Building Repairs and Maint.	\$130,000.00	\$30,736.00	\$1,064.00		\$40,800.00	\$47,300.00	\$4,000.00	\$2,400.00		\$94.00	\$434.07			\$400.00				\$1,040.00

Exhibit 9

East County Department of Aeronautics  
 Prospective Expenses of Operations Maintenance and Administration  
 Their Distribution by Revenue, Producing Cost Areas  
 Three Years Beginning January, 1968

Item	Total Amount	Landing Area		Passenger Terminal Bldg.	Public Passenger Terminal	Parking Unit Bldg.	Freight Terminal Bldg.	Airline	Fixed Gen. Avia.	Unfixed Gen. Avia.	Aviation Fuel Storage	FBO Bldg.	Operations Ground Sports	Rental Car Bldg.	Bldg. Rental	Other Rental Land		
		Runway & Taxiways	Pass. Term Apron															
Administrative Expenses																		
1) Salaries and Wages	\$221,000.00																	
2) Sickness Benefits	\$40,300.00																	
3) Printing	\$13,000.00																	
4) Postage	\$3,300.00																	
5) Telephone	\$25,000.00																	
6) Travel	\$37,000.00																	
7) Per Diem	\$3,000.00																	
8) Legal & Professional																		
A. Retainer & Consultants	\$40,000.00																	
B. Annual Audit	\$8,500.00																	
Sub-Total	\$48,500.00																	
9) Memberships & Subscriptions	\$4,900.00																	
10) Service Contracts & Other Const. Serv.	\$80,700.00																	
11) Equipment Repairs & Maint. & Comp.	\$4,000.00																	
12) Office Supplies	\$8,000.00																	
13) Gas, Oil and Grease	\$7,000.00																	
14) Taxes-Other	-0-																	
15) Insurance	\$70,000.00																	
16) Allowance for Replacement																		
A) Licenses and Unlicensed Vehicles	-0-																	
B) Office Furniture & Equipment	\$7,500.00																	
17) Other Supplies	\$4,500.00																	
18) Rentals of Equipment	-0-																	
19) Employees' Training & Improvement	\$500.00																	
20) TOTAL ADMINISTRATIVE EXPENSES	\$718,314.00	\$154,325.00	\$20,643.00	\$3,304.00	\$199,304.00	\$301,874.00	\$77,200.00	\$3,618.00	\$1,900.00	\$4,105.00	\$18,550.00	\$100.00	\$187.00	\$18,743.00	\$4,934.00	\$1,349.00	\$8,783.00	\$3,900.00



**PLAINTIFF'S EXHIBIT 20**

**RENTAL FEE RECOMMENDATIONS**

**JAMES C. BUCKLEY**

**FEBRUARY, 1969**

**FEEES FOR THE USE OF PUBLIC  
AIRCRAFT FACILITIES**

**AND**

**RENTAL FOR PASSENGER TERMINAL PREMISES,  
FOR FREIGHT TERMINAL PREMISES,  
FOR RENTABLE BUILDINGS,  
AND FOR GROUND SPACE**

**KENT COUNTY AIRPORT**

From January 1, 1968 Through December 31, 1970

James C. Buckley, Inc.

*Industrial and Transportation Consultants*

30 East 40th Street

New York, N.Y.

**TABLE OF CONTENTS**

	<b>Page</b>
I. Recommended Structure and Level of Rates .....	227
II. General Principles with Respect to Airport Rate-Making .....	239
III. Fees for the Use of the Landing Area .....	258
IV. Rental for Space in the Passenger Terminal Building .....	267
V. Rental for Public Automobile Parking Space .....	271
VI. Public Aircraft Parking and Tie-Down .....	272
VII. Fixed-Base Operator .....	274
VIII. Rentable Buildings .....	274
IX. Other Rentable Land .....	274
X. Exhibits .....	[omitted]
1. Average Annual Break-Even Need by Revenue-Producing Areas .....	
2. Cost Areas Map—January 1, 1968-December 31, 1970 .....	
3. Development of Average Annual Charges, Attributable to Value of Land .....	
4. Distribution by Revenue-Producing Areas of Average Annual Charges Attributable to Value of Land .....	
5. Average Annual Charges Attributable to Depreciable General Purpose Investment....	
6. Distribution by Revenue-Producing Areas of Average Annual Charges Attributable to Depreciable General Purpose Investment..	
7. Development by Revenue-Producing Areas of Average Annual Carrying Charges Attributable to Depreciable Investment in Individual Facilities .....	

## TABLE OF CONTENTS—Continued

8. Actual Expenses of Administration, Operation, and Maintenance .....
9. Prospective Expenses of Operation, Maintenance and Administration and Their Distribution by Revenue-Producing Cost Areas..
10. Responsibility of the Aeronautics Board (B) and the Airlines (A) for Services and Maintenance in the Passenger Terminal Premises, and Airline Common Use Facilities .....
11. Assumed Responsibility of the Aeronautics Board (B) and Tenants (T) for Services and Maintenance in Rentable Buildings .....
12. Space To Be Provided in the Passenger Terminal Building .....

FEES FOR THE USE OF  
PUBLIC AIRCRAFT FACILITIES  
AND  
RENTAL FOR PASSENGER TERMINAL PREMISES  
KENT COUNTY AIRPORT

Three Years Beginning January 1, 1968

*A. Structure and Level of Rates*

On the basis of the analyses and the detailed discussion of rates, fees and rentals, presented in Sections B and C, inclusive, it is determined that during the three years beginning January 1, 1968, the landing fees and Passenger Terminal Building rentals at the Kent County Airport will be as follows:

1. For the use of the Landing Area:

- a. By aircraft of a scheduled airline, the appropriate fee for each departure, including the preceding landing, for revenue flights, expressed in terms of a rate per thousand pounds of maximum allowable gross weight of the aircraft for landing is:

\$0.1905

The above charge will include the right to use aircraft loading positions on the Passenger Terminal Apron. There will be no charge for a departure by such aircraft if neither the departure, nor the preceding landing, were for revenue.

- b. By civil non-airline aircraft having a maximum allowable gross weight for landing of 7,500 pounds or more, the appropriate fee



for each departure, including the preceding landing, is:

\$0.20

with a minimum for each such take-off of \$2.00

- c. By Air Taxi aircraft, the appropriate fee for each departure including the preceding landing, is:

\$0.35

The above charge will include the right to use an aircraft loading position on the Passenger Terminal Apron.

2. For space in the Passenger Terminal Building, the annual rental rates per square foot will be as follows:

Type of Space (1)	Rate per Square Foot (2)
Enclosed, air conditioned-finished	\$12.71
Enclosed, not AC-finished	9.15
Enclosed, not AC-utility finish	6.99
Open deck	1.27

The above rental rates are appropriate only under Agreements and Leases where the Board's responsibility for services does not exceed that shown in Exhibit 10. These rates will be firm and not affected by the volume or the value of the business done by the tenant, where the tenant is a scheduled airline authorized to provide service to Kent County.

In the case of other tenants, the Board will fix the rental rates at such levels, relative to the above, as may be required by the exercise of sound business judgement, including the establishment of minimum guarantees, with the actual rent determined by the minimum guarantee or by a percentage of the vol-

ume of the business done by the tenant, whichever is greater.

3. With respect to the public aircraft parking and tie-down space,

- A rate is established for the use of the paved airline aircraft parking space of 20 cents per thousand pounds of maximum allowable gross weight for landing for each eight hours, or fraction thereof with no free use of such area permitted.
- For paved aircraft parking area for general aviation, a rate of \$20 per month for aircraft based at the airport is established.
- For unpaved space for the parking and tie-down of general aviation aircraft, the following rates apply:

\$3.00 per month for aircraft based at the airport.

\$1.00 per day or fraction thereof for itinerant aircraft.

#### B. Fees for the Use of the Landing Area

The Landing Area at the airport is considered to include the runways and taxiways, the Passenger Terminal apron and the related land required to meet normal clearance requirements related thereto. The breakeven need for the Landing Area, as shown in Exhibit 1, is the sum of the breakeven need for the Runways and Taxiways, and for the Passenger Terminal Apron. This break-even need is as follows:

##### Annual Break-Even Need of the Landing Area

Landing Area Sub-Areas (1)	Annual Break-Even Need (2)
Runways and Taxiways	\$234,330
Passenger Terminal Apron	50,949
<b>Total</b>	<b>\$285,279</b>

The costs applicable to each of these sub-areas of the landing area have been accumulated separately because of the portion of their break-even need which should be allocated to each class of use will vary between them. Each will be discussed individually.

#### *Passenger Terminal Apron Sub-Area*

The landing positions at the Passenger Terminal Building have been designed primarily on the basis of the requirements of scheduled air carriers. Provision has been made, however, for the use of one of eight loading positions on the Passenger Terminal Apron by air taxis. Consequently, 88 percent of the break-even need of the Passenger Terminal Apron has been assigned to the scheduled air carrier, and the balance to air taxis.

#### *Public Runways and Taxiways*

The runways, and taxiways will be used by scheduled air carriers and by general aviation. The distribution of the break-even need of the runways and taxiways as between these types of users are based on a combination of the following factors:

1. The number of aircraft departures in relation to total aircraft departures.
2. The maximum allowable gross weight at take-off of aircraft departing the airport in relation to the maximum allowable gross weight at take-off of all aircraft departing the airport.

The use of aircraft departures to allocate runway and taxiways costs bases such an allocation on the airspace capacity, and hence runway capacity utilized.

The use of maximum allowable gross weight at take-off of aircraft lifted from the airport to allocate runway and taxiway costs gives recognition to the additional costs involved in the provision of airport facilities adequate to

handle large airline aircraft. It fails, however, to recognize the fact that airline operations are with heavy aircraft, and hence use up less airspace and runway capacity in relation to weight lifted than do non-airline civil aircraft operations.

It is considered necessary, therefore, to allocate runway and taxiway break-even need on the basis of a formula which gives dual weight both to aircraft departures and to the maximum allowable gross weight at take-off of aircraft lifted from the airport. To achieve such an allocation, forecasts have been made of prospective average annual departures by each type of airport user during the average maximum allowable gross weight at take-off of the aircraft in prospective use by each type of user. The results, from the standpoint of percentage distribution of runway and taxiway break-even needs are as follows:

Distribution of Break-Even Need for Runways and Taxiways

Type of Operation (1)	Average Annual Departures				Percent of Total	
	Number (2)	Weight		Total (M lbs.) (4)	Departures (5)	Weight (6)
		Average (lbs.) (3)				
1. Scheduled Airlines	11,500	85,000		977,500	17.22	81.09
2. Other Air Carrier	600	60,000		36,000	0.90	2.99
3. Air Taxis	1,700	8,500		14,450	2.54	1.20
4. General Aviation	53,000	3,350		177,550	79.36	14.75
5. Total	66,800	—		1,205,500	100.00	100.00
						49.15
						1.95
						1.87
						47.05

*The Landing Area As A Whole*

On the basis of the above discussions, it is possible to establish the total annual amount to be recovered from the various airport users and their respective fair shares of the break-even need of the Landing Area. To make this computation complete, it is necessary to add as an additional element in the break-even need of the runways and taxiways, the rental value of the space in the Terminal Building required to be made available to the Weather Bureau, at less than compensatory rate, for their use in connection with the operation of the runways and taxiways. No deduction will be made for the annual service fee which the Weather Bureau will pay on such space because no provision has been made in the O&M budget for the cost of such services. The resulting total break-even need for the Landing Area, and its distribution among users of the Landing Area, is as follows:



Distribution Among Landing Area Users of Landing Area Break-Even Need

234

	Distribution Among Landing Area Users				
	Total Amount (2)	Scheduled Airlines (3)	Other Air Carrier (4)	Air Taxis (5)	General Aviation (6)
1. Break-Even need of the Passenger Terminal Apron	\$ 50,949	\$ 44,835	\$ —	\$ 6,114	\$ —
2. Break-Even need of the Runways and Taxiways	234,330	115,173	4,570	4,382	110,205
3. Rental value of space in the Terminal Building required to be given to the Weather Bureau at \$8.16 per square foot below the compensatory rate	11,114	5,462	217	208	5,227
Total	\$296,393	\$165,470	\$4,787	\$10,704	\$115,430

235

On the basis of the above, the fee which is applicable to the use of the Landing Area by the scheduled airlines during the three years beginning January 1, 1968 is as follows:

1. The scheduled airlines' share of the break-even need of the Landing Area was found to be \$165,470
2. The prospective maximum allowable gross weight for landing of average annual revenue departures by airline aircraft in the rate-making period here under consideration was found to be 868,500,000 lbs.
3. The fee for the use of the landing area by revenue flights of the scheduled airlines, in terms of a rate per thousand pounds of maximum allowable gross weight for landing would therefore be \$0.1905

*C. Rental for Space in Passenger Terminal Building*

The determination of equitable rental rates for space in the passenger terminal building required consideration of several controlling and limiting factors. These were:

1. The amount of potentially revenue-producing space to be provided.
2. The weight to be given to the variations in cost as between the different types of space provided.
3. The average vacancy for which allowance should be made.
4. Services to be provided by the Aeronautics Board.

Each of these factors will be discussed individually.

*Revenue-Producing Space Provided*

The revenue-producing space provided in the Passenger Terminal Building as of January 1, 1968, the beginning of the rate making period here under consideration, is 30,421 square feet. The break-down of this space by type and location is given in Exhibit 12.

*Weight to be Given Variations in Cost*

The several varieties of space provided in the Terminal Building makes it necessary to apply proper weighting factors to the various types of space in order to convert the break-even need to an equitable system of rental rates. Weighting factors were assigned to the various types of space provided in the Terminal Building on the basis of construction costs. When the average amount of each type of revenue-producing space available is weighted by the factor indicative of its relative cost, the equivalent basic rental units are as follows:

Types of Space (1)	Average Sq. Feet to be Available (2)	Weighting Factor (3)	Equivalent Rental Units (4)
Enclosed, air conditioned finished	16,994	1.00	16,994
Enclosed, not AC-finished	4,602	0.72	3,313
Enclosed, not AC-Utility finished	6,049	0.55	3,327
Open Deck	2,776	0.10	278
Total	30,421	—	23,912

### *Allowance for Vacancy*

During the rate-making period here under consideration, it is unlikely that there will be any significant amount of vacancy in the available revenue-producing space. Accordingly, no allowance has been made for vacancy in establishing rates per square foot.

### *Services to be Provided by the Board*

The break-even need developed for the Terminal Building necessarily has been based on definite assumptions as to the services to be provided by the Aeronautics Board and those to be provided by its tenants. The services provided by the Aeronautics Board to the various types of airline space in the Terminal Building are shown in Exhibit 10.

### *Basic Passenger Terminal Building Rentals*

The basic rental rates for floor space in the Passenger Terminal Building are rates which cover facilities and services which are made available to any tenant, and exclude any special installations made for a single tenant or for a group of tenants. This has been carried out with respect to the premises occupied by Fred Harvey by the separate accumulation of break-even need in Line 2-b of Exhibit 1, applicable to special installations and services provided for the use of this tenant.

In addition to the above total, which should appropriately be deducted from the Passenger Terminal Building break-even need in order to establish the basic rental units, the income which the Board can expect to receive from the rental of advertising wall space within the terminal, income which will not require the use of any floor space. We estimate that during the rate-making period here under consideration, the average annual amount of such income will be approximately \$1,200.

When consideration is given to the factors discussed above, the appropriate basic rental rates for floor space in the Passenger Terminal Building are as follows:

1. Break-even need from Exhibit 1		\$305,077
2. Deductions		
a. Prospective income from wall space not requiring floor space	\$1,200	1,200
3. Net to be recovered through space rental		303,877
4. The income producing floor space on which to base the rental schedule was found above to be equivalent, in terms of basic rental units, to		23,912
5. This gives the following average break-even need for each type of potentially revenue-producing floor space available in the Terminal Building:		

Types of Space	Average Break-Even Need per Square Foot
(1)	(2)
Enclosed, air conditioned finished	\$12.71
Enclosed, not AC-finished	9.15
Enclosed, not AC-utility finish	6.99
6. It should be noted that the above-established rates are the full rental charge, other than for ancillary services, for space made available to airlines, other aeronautical interests, and the Federal Government; but are minimums against percentage of gross business in the case of space made available to concessionaires.	

## *II. General Principles With Respect to Airport Rate-Making*

The establishment of airport rates, fees, rentals, and other charges involves the application of reasonable general principles based on experience both in rate-making and in airport operation.

As background, it is well to keep in mind the fact that an airport is not a single business, and hence is not an entity whose rates, fees, rentals, and other charges can be treated as if they were those of a single business. An airport is a complex of several different kinds of business,—different



not only in the service provided, but fundamentally different in respect to the reasons why the services are provided, and the manner in which the services are used. The typical terminal-type airport is a complex of businesses which are neither dependent nor independent, but which are inter-dependent both in their services to air transportation, viewed broadly, and in their services to the general public.

To illustrate, consider first the landing area which, at many airports is considered to include all of the area to, from, or across which an aircraft may be moved, and of which every aeronautical user of the airport has a right to use in common with others similarly situated. Thus the landing area includes the runways, which are used for the landing and taking-off of aircraft; the related taxiways, which permit the access to and egress from the runways; and the taxiways which permit the interchange of aircraft between the runways and their related taxiways, on the one hand, and ramp areas and loading positions, on the other hand.

Of similar character but sometimes treated separately for rate-making purposes is the public ramp and apron area. This area will include the ramp and loading positions adjacent to the passenger terminal buildings, and also the ramp and loading positions adjacent to the cargo terminal buildings if one be provided.

Here are two areas, sometimes combined for rate-making purposes, which must be provided if the site is to be usable as an airport, since these are the areas which permit the landing, inbound circulation, positioning, unloading, servicing, loading, outbound circulation, and taking off of the aircraft. They are areas which the aeronautical user of the airport must use in whole or in part if he is to use the airport at all. These are areas which require a very substantial investment if they are to accommodate the full range of aircraft prospectively desiring their use, and this investment must be approximately the same whether

these facilities are used at five percent, 50 percent, or 100 percent of their capacity. These are also areas which an airport which has received a grant-in-aid under the Federal Airport Act of 1946, as amended, must operate, as a matter of contractual obligation with the Federal Government, on fair and reasonable terms and without unjust discrimination. And these are areas from which such an airport may not exclude any individual user except as a member of a class, all of which has been excluded, and the exclusion of an entire class of users must be justified from the standpoint of safe operation or other reasonable grounds. In addition, these are areas which the airport operator who has received a grant-in-aid under the Federal Airport Act of 1946, as amended, must make available continuously for public use except and to the extent that their use is prevented by flood, storm, war, civil insurrection, and other causes beyond the control of the operator.

When these aspects of the operation of the landing area and of the ramp and apron areas are considered in relation to the amount of land required for an airport for scheduled service at a large metropolitan area, it becomes clear that insofar as the landing area and ramp and apron areas on an airport be concerned, the airport operator is in the public utility business in every sense of the word.

The passenger terminal building, on the other hand, is a special-purpose building which provides, among others, the following types of space and related services:

1. Space which is an essential adjunct to the use of the landing area by scheduled air carriers. This includes, among others, ticket counter and check-in space, operations space, and baggage reclaim space. The airport operator is under no statutory or contractual obligation to provide any of these types of space, or, if provided, to make it available on any particular terms or conditions.

2. Space which is used by the Federal Aviation Administration and the United States Weather Bureau in connection with their activities at the airport. The portion of this space which is concerned, in the case of the Federal Aviation Administration, with airport traffic control, and in the case of the Weather Bureau, with airport weather observations and briefings, is required under the Federal Airport Act of 1946, as amended, to be provided without charge except for services such as air conditioning, heat, light, water, sewerage, and cleaning. The work carried out by the Federal Agencies in such space is essential to the safe and effective utilization of the landing area by all classes of users.
3. Office space for use by Government agencies, commercial air carriers, and other tenants, for activities which do not necessarily have to be carried on in the airport terminal building or even at the airport, but which are inconvenienced by a location in the terminal building.
4. Space for so-called "consumer services", the number and character of which depends on the volume of air traffic and the size and character of the community whose airport is involved. These services, which range from public restrooms to privately-operated hotel facilities, from shoe-shine stands to commercial banks, and from soft-drink machines to luxury-type food and beverage service, are provided to meet the needs of the people who may be in the terminal building at any given time, regardless of the reason. The patronage of these services comes from employees at the airport, from passengers who originate or terminate their air journey at the airport, from friends and relatives who come to the airport with outbound passengers or to meet inbound passengers,

from passengers transitting the airport, and from residents of the surrounding area who come to the airport as an entertainment or recreational center. Except for the public restrooms, there is no compelling need for the provision of space for these consumer services except as desirable services for the general public at the airport.

In the light of these facts, it is reasonable to conclude with respect to the passenger terminal building at the airport, that:

1. It is not a public utility in the sense in which the term is traditionally used.
2. Within the passenger terminal building, there are broadly two classes of space:
  - a. Space made available as an adjunct to the use of the landing area, which should reasonably be considered subject for rate-making purposes to the same policies followed in establishing the fees for the use of the landing area.
  - b. Space used for consumer services, which is made available to private operators to serve a market not otherwise available to them. For such space, the airport operator has a right to a compensatory rental as a minimum, with a participation in gross revenue above such minimum commensurate with the response of the market to the service provided.

In the light of the above discussion and related factors, it may reasonably be concluded that the basic kinds of business in which the operator of a terminal-type airport engages are as follows:

1. The operation of the landing area as a public utility.



2. The development and offering of building space in the passenger and cargo terminal buildings, the use of which is necessary or desirable as an adjunct to the use of the landing area.
3. The development of space in the passenger terminal building which is desirable for the provision of consumer services to people who may be in the passenger terminal building.
4. The development and offering of land for the installation of improvements, and, in some cases, the installation of improvements, the use of which is necessary or desirable as an adjunct to the use of the landing area.
5. The development and offering of land for the installation of improvement, and, in some cases, the actual installation of improvements, the use of which is desirable for the provision of additional consumer services to people who may come to the terminal building.

Another characteristic of the airport business which bears on rate-making, and which is often not appreciated, is the fact that the airport operator is basically a landlord, providing facilities and services to private businesses which, in turn, offer products and services to the ultimate consumers. Except for its operation of the public restrooms and observation gallery in the passenger terminal building, the airport operator typically does not deal with the ultimate consumer. This means that so far as any tenant or user of airport facilities or services be concerned, the airport operator is in the same position as any other supplier from the standpoint of having to secure a compensatory return for what it supplies if it is to continue to keep the supply of its facilities and services in balance with demand.

So far as the scheduled airlines be concerned, in this respect the positions of the airport operator is exactly the

same as that of suppliers of aviation fuel, suppliers of in-flight meals, suppliers of repair parts and accessories, suppliers of flight equipment, and even the labor force. The cost of the facilities and services provided by an airport operator is only one of the many elements of business expense which each tenant and user of an airport must combine with the other costs to which he is put in order to determine how and at what price he will offer his own products or services to the ultimate consumer. This leads to the conclusion that airport tenants and users have no more right to expect to receive facilities and services from the airport operator at less than cost than from any other supplier.

This point is emphasized because it is frequently suggested that the airport operator should accept less than compensatory fees for some of his facilities and/or services in order to help his airport tenants and users promote their businesses. But the airport operator is no more in a position to do this than are the suppliers of aviation fuel, the manufacturers of aircraft, the suppliers of in-flight meals, the suppliers of repair parts and accessories, and so on. It is the business enterprise which deals with the ultimate consumer which has the problem of promoting its business on the basis of the total costs which it must bear in order to provide the products or services which it sells. It is certainly not the problem of the intermediate supplier of facilities or services, such as an airport operator, who cannot continue to supply such facilities and services unless his return is at least compensatory in relation to the costs of providing, operating, and maintaining the facilities and services which he offers.

In addition to the variety of businesses which are carried on at the airport, and the fact that an airport operator deals with other businesses as a landlord rather than as ultimate consumers, there are several other special factors which need to be kept in mind in developing a structure and level of rates for an airport. These include:



1. The fact that there are statutory requirements which bear on rate-making at the airport, including provisions of the Federal Aviation Act of 1953, as amended, and of the Federal Airport Act of 1946, as amended.
2. The fact that there are usually contractual obligations which may to a greater or lesser degree bear on the structure and level of rates at an airport, including particularly any Grant Agreements executed under the Federal Airport Act of 1946, as amended.
3. The fact that there are many considerations of public policy which bear on the rates, fees, rentals, and other charges adopted for an airport, entirely apart from the statutory and contractual requirements. These include items such as the following:
  - a. The fact that the tenants and users of most airports have available to them the municipal services of the community or communities in the areas around the airport, yet the tenants and users of the airport normally pay no taxes on the facilities which they use at the airport.
  - b. The fact that in many communities the voters or their elected representatives have made clear that airports must proceed henceforth on a self-supporting basis through the sale of revenue bonds.

With this general background in mind, it is appropriate to consider in descriptive terms what an airport should reasonably expect to recover through its rates, fees, rentals, and other charges from the various facilities and services which it offers.

It is submitted that the airport operator will not be meeting its obligation to its own community if it provides any

facilities or services below their true economic cost; that it will not be meeting its obligation to its aeronautical tenants and users if it imposes rates, fees, rentals, and other charges in excess of their true economic cost except as additional increments may be required for reserves and debt service margin to provide needed financing; and that it will not be protecting the interests of tax-paying purveyors of merchandise and services outside the airport unless the rental rate for concessionaires and purveyors of consumer services at the airport is set at a compensatory rental as a minimum, with a participation in gross revenue above such minimum commensurate with the response of the market to the service provided.

The common factor, therefore, in the rental to be recovered from all classes of airport tenants and users is the compensatory rental required to recover the real economic cost of providing, operating, and maintaining airport facilities and services. The initial task in airport rate-making, therefore, is to determine the total amount which must be recovered from the airport to cover the real economic cost of providing, operating, and maintaining its facilities and services. For convenient reference, this is sometimes called the "Airport Break-even Need." The question then becomes, from the standpoint of policy, the factors which should be considered to arrive at the total break-even need for a given airport for a given rate-making period. Each of these will be discussed individually.

#### *Return on Investment in Land*

Land is a permanent asset of the airport operator and can be converted to other uses in the event the airport is discontinued. Consequently, no justification is seen for including in the airport break-even need an increment for recovery of this investment. On the other hand, so long as the investment in land is not recovered, there is an annual cost for the rent on this capital at least equal to the interest rate normally associated with long-term debt. It is considered, therefore, that an appropriate policy

with respect to the return on investment in land to be included in the airport's break-even need, would be to include an increment for interest on such investment at an appropriate long-term rate.

#### *Return on Investment in Depreciable Improvements*

Investment in depreciable improvements will be used up over the reasonable economic life of the facilities involved, and hence must be recovered over that life in the form of an annual depreciation charge if the airport operator is to be made whole. It should be emphasized that the period over which this investment must be recovered is the reasonable *economic* life of the facilities involved, which is not necessarily as long as their *physical* life.

It is sometimes argued that the annual charge for depreciation should not be based on original cost, but rather on the original cost less an assumed amount for residual value at the end of the depreciation period. There is little in airport experience to date, however, to justify an assumption that the typical depreciable improvement at an airport will, in fact, have residual value in excess of the cost of demolition, removal, and restoration,—and much to indicate that it will not. The original terminal buildings and some of the runways at Cleveland, Dallas, Denver, New York (La Guardia), and St. Louis are cases in point. Consequently, it is not considered reasonable to deduct an assumed residual value before determining the annual increment to include in the airport break-even need for recovery of the investment in depreciable improvements.

Another cost to be recognized as part of the return required on investment in depreciable improvements is the interest on such investment.

Another element for which allowance should be made in determining the return required on investment in depreciable improvements is the periodic maintenance re-

quired in such improvements. Such maintenance covers items which do not recur each year, and hence are not normally covered in the annual maintenance budget. Typical would be exterior painting, re-roofing, seal-coating, and the like. Normal practice is to establish a reserve for such maintenance by setting aside an annual allowance for such items out of revenue, and then to make the expenditures out of the reserve fund as such periodic maintenance is required. Such an allowance will normally run from 0.5 percent to 1.5 percent of the estimated reproduction cost, depending on the nature of the depreciable improvement.

In the light of the above discussion, it is considered that an appropriate policy with respect to the return on investment in depreciable improvements to be included in the airport's break-even need would be to include the following increments:

1. An increment for depreciation based on the reasonable economic life of an improvement, with no allowance for residual value.
2. An increment for periodic maintenance determined by applying an appropriate rate to the estimated reproduction cost of the various depreciable improvements.

#### *Administration, Operation and Maintenance Expenses*

Expenses of administration, operation and maintenance are clearly part of the break-even need of an airport. Airport tenants, particularly scheduled airlines, frequently question whether the amount spent or budgeted for the administration, operation, and maintenance of the airport is fair and reasonable.

Since most airport operators must process their expense budgets through established municipal procedures, most of which involve a public hearing, it would appear that air-



port tenants and users who question the fairness and reasonableness of airport expenses should raise their questions at such hearings and not in connection with rate-making procedures. Consequently, it is considered appropriate, as a matter of policy, that the airport expenses as budgeted or as expected to be budgeted be included in the break-even need for the airport.

#### *Increment for Reserves and Debt Service Margin*

Normally, the break-even need would not include increments for reserves and debt service margin other than the items discussed above. On the other hand, in the case of an airport operator required to finance through the sale of airport revenue bonds, it may be necessary to include such increments in the break-even need in order to provide an adequate margin to permit the sale of such bonds at a reasonable rate. This is a matter which can only be decided individually based on the facts as they apply to the situation of a given airport. Nevertheless, to the extent that such increments be required in order to permit the financing of needed improvements, they are real economic costs and should, as a matter of policy, be reflected in the break-even need.

#### *The Matter of Federal Investment*

The discussion to this point has assumed that the carrying charges on investment, whether depreciable or non-depreciable, would be based on the total investment made, regardless of the source of funds. This would mean that the break-even need would include both interest and depreciation on the portion of the airport investment represented by grants-in-aid by the Federal Government.

It has been argued, however, that these grants have been made to aid the aeronautical users of the airport, and that they should be excluded from the rate base and their carrying value excluded from the break-even need. With the informal support of the Federal Aviation Administra-

tion, most airports in the United States have excluded such grants from their rate bases. The result of this procedure has been to pass on to airport tenants and users, without permanent benefit to the airport operator, the grants-in-aid which have been made to encourage and assist airport development.

Clearly, grants-in-aid do little to provide for the "future needs of civil aeronautics" if they be treated as grants to be liquidated for the benefit of airport tenants and users rather than for the benefit of the airport. A sounder and more defensible policy would be to treat these Federal grants-in-aid as revolving funds for the permanent support of adequate airport development. To accomplish this objective, however, the investment would have to be recovered through the airport's rates, fees, rentals, and other charges.

While the exclusion of Federal grants-in-aid from the rate base is not considered sound airport rate-making policy, such exclusions have been made in this report in the light of current practice and the attitude of the Federal Aviation Administration.

#### *Conclusions as to Break-Even Need*

On the basis of the above discussion, it is concluded that the establishment of rates, fees, rentals, and other charges for a given airport requires first the establishment of the average annual break-even need for the airport during the rate-making period, such break-even need to include:

1. Interest at a fair long-term rate on the total investment.
2. Depreciation on the total investment in depreciable improvements.
3. Interest at a fair long-term rate on the declining balance of the total investment in depreciable improvements.



4. An increment for a reserve for periodic maintenance, the amount to be determined by applying an appropriate rate to the estimated reproduction cost of depreciable improvements.
5. Expenses of administration, operation, and maintenance, as budgeted or expected to be budgeted.
6. An increment, if required to permit economical financing of needed improvements, for reserves and debt service margin.

The resulting amount would be the average annual amount which should be produced over the rate-making period by the structure and level of rates adopted for the airport.

#### *Distribution of the Break-Even Need*

Once the break-even need be established for an airport, the next problem is to distribute this break-even need among the various facilities and services which must be priced. Typically this is done by establishing so-called "Cost Areas," which are functionally homogeneous activities such as the landing area, the terminal area, the hangar area, and the like.

The actual distribution of the total break-even need among the various cost areas is a matter of cost accounting, involving direct distribution to individual cost areas wherever practical, and allocations based on appropriate formulae where distribution is not feasible.

#### *Cross-Crediting of Excess Revenues*

It has been argued that when excess revenues are developed by one area of the airport, as might be the case in the terminal area as a result of percentage leases with concessionaires, such excess revenues should be credited against the break-even need of other areas, such as the landing area, before establishing the rates, fees, rentals,

or other charges applicable to such area. This argument is based on a theory advanced by the scheduled air carriers that they generate the patronage at the airport, including the patronage of the concessions, and hence are entitled to any excess revenues which may accrue from such patronage.

No sound basis is found for this argument. No aeronautical users of an airport would be treated unfairly under the rate-making procedures discussed herein, since no rates applicable to such users or tenants would exceed the airport's break-even need, and this break-even need would reflect only the true economic costs of providing, operating, and maintaining the facilities and services offered, with such increments for reserve and debt service margin, if any, as might be required to finance needed improvements. Under these circumstances, a claim by one class of tenants such as the scheduled airlines to excess revenues from concessionaire operations is, simply an attempt by that class of tenant to secure the use of public facilities and services at rates which are less than compensatory, — clearly an approach which is not consistent with public interest.

Furthermore, the claim that air traffic and related airport patronage is generated by a particular carrier or carriers is also without foundation. Air traffic is generated by the community and results from the economic character of the community and its need for transportation. The traffic will move whether the community be served by carriers A, B, or C; or by carriers X, Y, or Z.

**FEEs FOR THE USE OF  
PUBLIC AIRCRAFT FACILITIES  
AND  
RENTAL FOR PASSENGER TERMINAL PREMISES,  
FOR FREIGHT TERMINAL PREMISES,  
FOR RENTABLE BUILDINGS, AND  
FOR GROUND SPACE**

**KENT COUNTY AIRPORT**

Three Years Beginning January 1, 1968

**I. Recommended Structure and Level of Rates**

On the basis of the general principles with respect to airport rate-making which are discussed in Section II, and the detailed discussion of rates, fees, rentals, and other charges presented in Sections III-XI, inclusive, it is recommended that during the three years beginning January 1, 1968, the structure and level of rates at the Kent County Airport be as follows:

**1. For the use of the Landing Area:**

- a. By aircraft of a scheduled airline, the appropriate fee for each departure, including the preceding landing, if either be for revenue, expressed in terms of a rate per thousand pounds of maximum allowable gross weight of the aircraft for landing, is:

**\$0.1661**

The above charge should include the right to use aircraft loading positions on the Passenger Terminal Apron. There should be no charge for a departure by such aircraft if neither the departure, nor the preceding landing, be for revenue.

- b. By civil non-airline aircraft having a maximum allowable gross weight for landing of

7,500 pounds or more, the appropriate fee for each departure, including the preceding landing, is:

**\$0.20**

with a minimum for each such take-off of \$2.00.

- c. By based civil non-airline aircraft having a maximum allowable gross weight for landing of 5,000 pounds or more, but less than 7,500 pounds, a flat fee of:

**\$15.00 per month, or \$150.00 per year**

- d. By based civil non-airline aircraft having a maximum allowable gross weight for landing of 2,500 pounds or more, but less than 5,000 pounds, a flat fee of:

**\$12.00 per month, or \$120.00 per year**

- e. By based civil non-airline aircraft having a maximum allowable gross weight for landing of 2,500 pounds or less, a flat fee of:

**\$9.50 per month, or \$95.00 per year**

- f. Air Taxi Aircraft's share of the break-even need of the landing area was found previously to be \$10,404. To recover this amount on the basis of the aircraft weight prospectively to be operated by air taxi companies would require a rate of approximately 72 cents per thousand pounds of maximum allowable gross weight for landing. It is felt that for the current rate-making period, this rate could be approximately established at 35 cents per thousand pounds of maximum allowable gross weight for landing.

2. For space in the Passenger Terminal Building, the annual rental rates per square foot should be as follows:

Type of Space (1)	Rate per Square Foot (2)
Enclosed, air conditioned	\$14.14
Enclosed, not AC-utility finish	4.95
Enclosed, unheated utility finish	3.54
Open deck	1.41

The above rental rates are appropriate only under Agreements and Leases where the Commission's responsibility for services does not exceed that shown in Exhibit 10. These rates should be firm and not affected by the volume or the value of the business done by the tenant, where the tenant is a scheduled airline authorized to provide service to Kent County.

In the case of other tenants, the Commission should fix the rental rates at such levels, relative to the above, as may be required by the exercise of sound business judgment, including the establishment of minimum guarantees, with the actual rent determined by the minimum guarantee or by a percentage of the volume of the business done by the tenant, whichever be greater.

3. For the public automobile parking area, at the passenger terminal building a minimum annual rental of \$65,000, with the actual rental to be this minimum guarantee or the amount determined by application of the percentage of gross business bid by the successful bidder, whichever be higher.
4. With respect to the public aircraft parking and tie-down space,
  - a. Establish a rate for the use of the paved airline aircraft parking space of 20 cents per thousand pounds of maximum allowable gross weight for landing for each eight hours, or

fraction thereof, with no free use of such area permitted.

- b. For paved aircraft parking area for general aviation aircraft, establish a rate of \$20 per month for aircraft based at the airport, at a rate of \$1.75 per day for aircraft not based at the airport.
  - c. For unpaved space for the parking and tie-down of general aviation aircraft,
 

\$3.00 per month for aircraft based at the airport.

\$1.00 per day or fraction thereof for itinerant aircraft.
5. With respect to fixed-base operation,
  - a. It is recommended that no adjustments be made in the physical facilities made available to the existing fixed-base operator, or any extension made in the demised premises, unless the term of the agreement be reduced to 20 to 25 years, and the corresponding adjustment made in their annual rental obligations.
6. With respect to rental of buildings,
  - a. The hotel should provide an average annual guaranteed minimum rental of around \$25,500 per year.
7. Rentable land should have a basic price of \$900 per acre per year to which should be added location increments of from \$100 to \$4,100 per year depending on the location of the land in relation to the terminal building, in relation to runways and taxiways, in relation to rail and highway access, and the like.



### III. Fees for the Use of the Landing Area

Typically, the Landing Area at an airport is considered to include the runways and taxiways, and the related land required to meet normal clearance requirements related thereto. At airports in the United States, it has become customary to include the Passenger Terminal Apron and, where provided, the Freight Terminal Apron as part of the Landing Area, in order to avoid the necessity for establishing and collecting separate fees for each of these two apron areas. The Kent County Airport will have little in the way of a Freight Terminal Apron during the rate-making period here under consideration. Accordingly, the break-even need for the Landing Area, as shown in Exhibit 1, is the sum of the break-even need for the Runways and Taxiways, for the Passenger Terminal Apron, and for the Freight Terminal Apron. This break-even need is as follows:

#### Annual Break-Even Need of the Landing Area

Landing Area Sub-Areas (1)	Annual Break-Even Need (2)
Runways and Taxiways	\$234,330
Passenger Terminal Apron	50,949
Total	\$285,279

The costs applicable to each of these sub-areas of the landing area have been accumulated separately because of the portion of their break-even need which should be allocated to each class of use will vary as between them. Each will be discussed individually.

#### Passenger Terminal Apron Sub-Area

The loading positions at the Passenger Terminal Building have been designed primarily on the basis of the requirements of scheduled air carriers. Provision has been made, however, for the use of one of eight loading positions on the Passenger Terminal Apron by air taxis. Con-

sequently, 88 percent of the break-even need of the Passenger Terminal Apron has been assigned to the scheduled air carrier, and the balance to air taxis.

#### Public Runways and Taxiways

Typically, the runways, and taxiways will be used by scheduled air carriers, by general aviation, and by such military aircraft as may land at the airport. The distribution of the break-even need of the runways and taxiways as between these types of users can be based on one or a combination of the following factors:

1. The number of aircraft departures in relation to total aircraft departures.
2. The maximum allowable gross weight at take-off of aircraft departing the airport in relation to the maximum allowable gross weight at take-off of all aircraft departing the airport.

The use of aircraft departures alone to allocate runway and taxiway costs bases such an allocation solely on the airspace capacity, and hence runway capacity utilized.

The use of maximum allowable gross weight at take-off of aircraft lifted from the airport to allocate runway and taxiway costs gives recognition to the added costs involved in the provision of airport facilities adequate to handle large airline aircraft. It fails, however, to recognize the fact that airline operations typically are with heavy aircraft, and hence use up less airspace and runway capacity in relation to weight lifted than do non-airline civil aircraft operations.

It is considered necessary, therefore, to allocate runway and taxiway break-even need on the basis of a formula which gives equal weight both to aircraft departures and to the maximum allowable gross weight at take-off of aircraft lifted from the airport. To achieve such an allocation, forecasts have been made of prospective average

annual departures by each type of airport user during the rate-making period here under consideration, as well as of the prospective average maximum allowable gross weight at take-off of the aircraft in prospective use by each type of user. The results, from the standpoint of percentage distribution of runway and taxiway break-even need, are as follows:

Distribution of Break-Even Need for Runways and Taxiways

Type of Operation (1)	Number (2)	Average Annual Departures Weight		(3)	(4)	Percent of Total		
		Average (lbs.)	Total (M lbs.)			Departures (5)	Weight (6)	Combined (7)
1. Scheduled Airlines	15,500	72,000	1,116,000			21.85	80.89	51.37
2. Other Air Carrier	600	61,000	36,000			0.85	2.65	1.75
3. Air Taxis	1,700	8,500	14,450			2.40	1.05	1.73
4. General Aviation	53,150	4,000	212,600			74.90	15.41	45.15
5. Total	70,950	—	1,379,630			100.00	100.00	100.00

### The Landing Area As A Whole

On the basis of the above discussions, it is possible to establish the total annual amount to be recovered from the various airport users and their respective fair shares of the break-even need of the Landing Area. To make this computation complete, it is necessary to add as an additional element in the break-even need of the runways and taxiways, the rental value of the space in the Terminal Building required to be made available to the Weather Bureau without charge, except for utilities, for their use in connection with the operation of the runways and taxiways. No deduction will be made for the annual service fee which the Weather Bureau will probably pay on such space because no provision has been made in the O & M budget for the cost of such services. The resulting total break-even need for the Landing Area, and its distribution among users of the Landing Area, is as follows:

### Distribution Among Landing Area Users of Landing Area Break-Even Need

Item	Total Amount	Distribution Among Landing Area Users			
		Scheduled Airlines	Other Air Carrier	Air Taxis	General Aviation
(1)	(2)	(3)	(4)	(5)	(6)
1. Break-Even need of the Passenger Terminal Apron	\$ 50,949	\$ 44,835	\$ —	\$ 6,114	\$ —
2. Break-Even need of the Runways and Taxiways	234,330	120,375	4,101	4,054	105,800
3. Rental value of space in the Terminal Building required to be given to the Weather Bureau at less than compensatory rate except for utilities	13,620	6,997	238	236	6,149
4. Total	\$298,899	\$172,207	\$4,339	\$10,404	\$111,949



*Recovery From the Scheduled Airlines of Their Share of Landing Area Break-Even Need*

The scheduled airlines usually argue that their portion of the break-even need of the landing area should be recovered on the basis of maximum allowable *landing* weight. There are far more persuasive arguments for the use of maximum allowable gross weight at take-off than there are for the use of maximum allowable gross weight for landing, as the unit on which to base a fee for the use of the landing area. Nevertheless, it is common practice at civil airports within the conterminous United States to use landing weight, and this unit will be used in this report.

The scheduled airlines will usually argue that fees for the use of the landing area should be applied only to revenue flights, rather than to all flights, including both revenue and non-revenue. Actually, so long as the rate be developed properly, the total amount collected by the airport will be the same whether it be distributed over revenue flights alone, or over all flights. Consequently, the rate developed in this report assumed that it will be applied only to revenue flights.

Typically, rates established for the use of the landing area in earlier years included a quantity discount, so that the rate would go down as the individual airline had more flight activity at the airport. In recent years, however, there has been a general tendency to eliminate any quantity discounts in the rates applicable to the use of the landing area. This is because no sound basis can be found for granting a discount for multiple use of the landing area by a single carrier, as distinguished from its individual use by many carriers. There might be a theoretical savings in billing, yet it can also be argued that billing is more economical without the so-called quantity discount.

While it has been argued that the quantity discount would generate additional service by the benefiting airlines, the

fact remains that the fee which the airline pays for the use of the landing area is so small in relation to its line-haul revenue and line-haul expense that even if the use of the landing area were free, it is extremely doubtful that it would have the slightest effect on the amount of service provided. Consequently, it is felt that in the interest of equitable treatment of all airlines, no quantity discount should be included in the fees applicable to the use of the landing area. This practice has been followed in this report.

On the basis of the above discussion, the fee which should be applicable to the use of the Landing Area by the scheduled airlines during the three years beginning January 1, 1968 is as follows:

- |   |                    |
|---|--------------------|
| 1. The scheduled airlines' share of the break-even need of the Landing Area was found previously to be  | 172,207            |
| 2. The prospective maximum allowable gross weight at take-off of average annual revenue departures by airline aircraft in the rate-making period here under consideration was found to be               | 1,116,000,000 lbs. |
| 3. The equivalent maximum allowable gross weight for <i>landing</i> would be approximately  | 1,036,950,000 lbs. |
| 4. The fee for the use of the landing area by revenue flights of the scheduled airlines, in terms of a rate per thousand pounds of maximum allowable gross weight for <i>landing</i> would therefore be | 0.1661             |

*Recovery of General Aviation's Share of the Break-Even Need of the Landing Area*

General Aviation's share of the break-even need of the landing area was found previously to be \$111,949. Currently, the Board has two sources through which to recover General Aviation's share of the break-even need of the landing area. They are:

1. Landing fees on the larger General Aviation.
2. Flowage fees on aviation fuel.

Obviously, careful consideration must be given to this problem if the Board is to realize from general aviation its fair share of the cost of providing, operating, and maintaining the landing area. To close the indicated gap, it is recommended that:

1. The current fuel flowage fees be increased by approximately 12%.
2. All general aviation aircraft with a maximum allowable gross weight for landing of 7,500 pounds or more be required to pay a landing fee at a rate of \$0.20 per thousand pounds of maximum allowable gross weight for landing, with a minimum of \$2.00 per landing.
3. Aircraft based at the airport with a maximum allowable gross weight for landing of less than 7,500 pounds be required to pay a flat fee for unlimited use of the landing area which would be \$9.50 per month, or \$95.00 per year, for aircraft with a maximum allowable gross weight for landing of less than 2,500 pounds; \$12.00 per month, or \$120.00 per year, for aircraft with a maximum allowable gross weight for landing of 2,500 pounds or more, but less than 5,000 pounds; and \$15.00 per month, or \$150.00 per year, for aircraft with a maximum allowable gross weight for landing of 5,000 pounds or more, but less than 7,500 pounds.

*Recovery of Air Taxi Aircraft's Share of the Break-Even Need of the Landing Area*

Air Taxi Aircraft's share of the break-even need of the landing area was found previously to be \$10,404. To recover this amount on the basis of the aircraft weight prospectively to be operated by air taxi companies would require a rate of approximately 72 cents per thousand pounds of maximum allowable gross weight for landing. It is felt that for the current rate-making period, this rate could appropriately be established at 35 cents per

thousand pounds of maximum allowable gross weight for landing.

*IV. Rental for Space in Passenger Terminal Building*

The determination of equitable rental rates for space in the passenger terminal building required consideration of several controlling and limiting factors. These were:

1. The amount of potentially revenue-producing space to be provided.
2. The weight to be given to the variations in cost as between the different types of space provided.
3. The average vacancy for which allowance should be made.
4. Services to be provided by the Aeronautics Board.

Each of these factors will be discussed individually.

*Potentially Revenue-Producing Space to be Provided*

The potentially revenue-producing space to be provided in the Passenger Terminal Building as of January 1, 1968, the beginning of the rate making period here under consideration, is 29,694 square feet. The break-down of this space by type and location is given in Exhibit 12.

*Weight to be Given Variations in Cost*

The several varieties of space to be provided in the Terminal Building makes it necessary to apply proper weighting factors to the various types of space in order to convert the break-even need to an equitable system of rental rates. Weighting factors were assigned to the various types of space to be provided in the Terminal Building on the basis of construction costs. When the average amount of each type of revenue-producing space to be available is weighted by the factor indicative of its relative cost, the equivalent basic rental units are found to be as follows:



Type of Space (1)	Average Square Feet To Be Available (2)	Weighting Factor (3)	Equivalent Rental Units (4)
Enclosed, air conditioned	18,466	1.00	18,466
Enclosed, not AC-utility finish	6,358	0.35	2,225
Enclosed, unheated-Utility finish	2,094	0.25	524
Open Deck	2,776	0.10	278
Total	29,694	—	21,493

### *Allowance for Vacancy*

During the rate-making period here under consideration, it is unlikely that there will be any significant amount of vacancy in the available revenue-producing space. Accordingly no allowance has been made for vacancy in establishing rates per square foot.

### *Services to be Provided by Commission*

The break-even need developed for the Terminal Building necessarily has been based on definite assumptions as to the services to be provided by the Aeronautics Board and those to be provided by its tenants. Unless the agreements and leases executed with tenants reflect these assumptions, it will not be appropriate to utilize the rental rates here developed. The services assumed to be provided by the Aeronautics Board in the various types of airline space in the Terminal Building are shown in Exhibit 10. In space to be rented to concessionaires and in commercial office space, it has been assumed that the Aeronautics Board would provide heat, electricity for illumination, and air conditioning, with all other services to be provided by the tenant.

### *Basic Passenger Terminal Building Rentals*

The basic rental rates for floor space in the Passenger Terminal Building should be rates which cover facilities and services which will be made available to any tenant, and should exclude any special installations made for a single tenant or for a group of tenants. This has been carried out with respect to the premises occupied by Fred Harvey by the separate accumulation of break-even need in Line 2-b of Exhibit 1, applicable to special installations and services provided for the use of this tenant.

In addition to the above total, which should appropriately be deducted from the Passenger Terminal Building break-even need in order to establish the basic rental rates, the Board can expect to receive from the rental of advertising



wall space within the terminal, income which will not require the use of any floor space. We estimate that during the rate-making period here under consideration, the average annual amount of such income should be approximately \$1,200.

When consideration is given to the factors discussed above, the appropriate basic rental rates for floor space in the Passenger Terminal Building are found to be as follows:

1. Break-even need from Exhibit 1	\$305,077
2. <i>Deductions</i>	
a. Prospective income from wall space not requiring floor space	\$1,200      1,200
3. Net to be recovered through space rental	303,877
4. The income-producing floor space on which to base the rental schedule was found above to be equivalent, in terms of basic rental units, to	21,493
5. This gives the following average break-even need for each type of potentially revenue-producing floor space available in the Terminal Building:	

Type of Space (1)	Average Break-Even Need per Square Foot (2)
Enclosed, air conditioned	\$14.14
Enclosed, not AC-utility finish	4.95
Enclosed, unheated-utility finish	3.54
Enclosed, unheated-utility finish	1.41

6. It should be noted that the above-established rates are intended to be the full rental charge, other than for ancillary services, for space made available to airlines, other aeronautical interests, and the Federal Government; but to be simply minimums against percentages of gross business in the case of space made available to concessionaires.

### *Recovery of Break-Even Need for Harvey Premises*

It will be noted from Exhibit 1, that a separate annual break-even need of \$22,169 is shown for the premises occupied by Fred Harvey in the Passenger Terminal Building. This has nothing to do with the basic rental for the space to be utilized by Harvey, the minimum for which should be at the above rates. In addition, however, the minimum paid by Harvey should cover this separate break-even need which represents the annual break-even need on the special installations and equipment provided for Harvey, which are normally the responsibility of the tenant. The appropriate minimum annual rental for the space to be occupied by Harvey in the Passenger Terminal Building should, therefore, be as follows:

1. <i>Basic Rental</i>	
7,413 square feet of enclosed air conditioned space at	\$14.14      \$104,820
1,422 square feet of enclosed space not air conditioned—utility finish at	4.95      7,039      \$111,859
2. <i>Rental on Installations and Equipment</i>	22,169
3. Total	\$134,028

### *V. Rental for Public Automobile Parking Spaces*

During the rate-making period here under consideration, the Aeronautics Board will provide enlarged public automobile parking space in front of the Passenger Terminal Building.

In the past, the Board, itself, has operated the public automobile parking space opposite the Passenger Terminal Building. In the 9 months ended September 30, 1968, this operation was reported as returning revenue of \$79,485. It will be noted from Exhibit 1, that during the rate-making period here under consideration, the break-even need for this area will be \$64,542. Clearly reconsideration must be given to the question of whether

this facility should continue to be operated by the Board, or whether it should be awarded to a private contractor on competitive bidding.

On the basis of past experience at the airport, the average annual income potentially available during the three years beginning January 1, 1968 should be about \$93,000, of which the Board should net about \$65,000. On the basis of past experience, it appears to us that the chances of realizing net dollars in this amount from Board operation are sufficiently doubtful to justify soliciting bids from private operators.

In such event, the break-even need set forth in Exhibit 1 should be established as the minimum, with private operators bidding on identical invitations to bid, bidding the single percentage which they will pay on gross revenue for each of the three years beginning January 1, 1968.

#### VII. *Public Aircraft Parking and Tie-Down Space*

During the rate-making period here under consideration, the Aeronautics Board will be providing paved parking area for airline aircraft, paved parking area for general aviation aircraft, and unpaved area for aircraft parking and tie-down. It is assumed that each of these areas will be operated directly by the Board. The rates considered appropriate for each will be discussed individually.

##### *Rates for Paved Aircraft Parking Area for Airline Aircraft*

It will be noted from Exhibit 1 that the break-even need for the paved airline aircraft parking area will total \$2,173 annually. Two parking spaces are provided so that the break-even need for each space will be \$1,087.

At a sixty-six and two-thirds percent load factor, which appears reasonable, this would require the recovery from each space of \$4.50 per day.

It is recommended, therefore, that use of the paved airline aircraft parking space be at a rate of 20 cents per

thousand pounds of maximum allowable gross weight for landing for each eight hours, or fraction thereof, with no free use of such space permitted.

##### *Rates for Paved Aircraft Parking Area for General Aviation Aircraft*

It will be noted from Exhibit 1 that the break-even need for the paved area for the parking of general aviation aircraft is \$10,659. Sixty such spaces are to be provided or an average annual break-even need per aircraft space of \$178.

Basically there should be two classes of users,—the operator who bases at the airport, who would like to rent such space on a monthly basis; and the aircraft operator coming in as an itinerant who will wish to use it intra-day or overnight. To allow for partial vacancy among both types of users, it is recommended that the rates be set as follows:

\$20 per month for aircraft based at the airport

\$1.75 per day for aircraft not based at the airport

##### *Rates for the Use of Unpaved Parking and Tie-Down Area by General Aviation Aircraft*

It will be noted from Exhibit 1 that the break-even need for the aircraft parking and tie-down area is \$1,361. It will accommodate 150 aircraft for an annual cost of \$8.50 per aircraft, or about \$0.75 per aircraft per month.

Here, again, users will include aircraft based at the airport, and itinerant aircraft. To allow for partial use of each type of such aircraft, it is recommended that the rates be as follows:

\$3.00 per month for aircraft based at Kent County Airport

\$1.00 per day, or fraction thereof, for itinerant aircraft

### VII. *Fixed Base Operators*

Currently there is one fixed-base operator at the Airport,—Northern Air Service. It will be noted from Exhibit 1 that during the rate-making period here under consideration, the break-even need on the installation which has been financed for this operator will be \$68,396. The agreements currently in effect with this operator provide for average annual payments of about \$62,601,—an annual deficit of about \$5,795.

Basically, this facility would show a much greater prospective annual deficit if the term of the lease were not so long. It is recommended, therefore, that no adjustments be made in the physical facilities made available to Northern Air Service, or an extension made in their demised premises, unless the term of the agreement be reduced to 20 to 25 years, and a corresponding adjustment made in annual rental obligation.

### VIII. *Rentable Buildings*

Apart from the building for Northern Air Service, the Board has only one building which it has installed and rented to an individual tenant,—this is the hotel building.

It will be noted from Exhibit 1 that during the rate-making period here under consideration, the break-even need on the hotel building, will total approximately \$23,300 annually. Under the agreements currently in effect, the revenue from this facility can be expected to be \$24,000 to \$26,000 annually.

### IX. *Other Rentable Land*

It will be noted from Exhibit 1 that the break-even need on Other Rentable Land is expected to total \$33,110 annually. There is a total of approximately 287 acres of such land, so that the average annual break-even need would be \$115 per acre per year.

Such land is widely distributed throughout the airport, however, and it is obvious that what would be a fair price for a particular acre, would be a grossly unfair price for another acre. It is recommended, therefore, that the pricing be approximately as follows:

A basic price of \$900 per acre per year, regardless of location.

A location increment of from \$100 to \$4,100 per acre per year depending on the location of the land in relation to the terminal building, in relation to runways and taxiways, in relation to rail and highway access, and the like.

[Exhibits omitted in printing]



## PLAINTIFF'S EXHIBIT 24

[LOGO]

PIEDMONT AIRLINES  
 KENT COUNTY INTERNATIONAL AIRPORT  
 5500 South 44th Street  
 Grand Rapids, MI 49508

October 16, 1985

Mr. Robert Ross  
 Director of Aeronautics  
 Kent County Airport  
 Grand Rapids, MI 49508

Dear Mr. Ross:

During a recent Manager's meeting a question arose about the fire protection for our overnight equipment. After the meeting was adjourned I spoke to Mr. Hidley to confirm the coverage of the Fire Department. I don't know why I didn't realize the Fire Department was not here between midnight and 0600. There have been times that our flights arrive after midnight but just as important is the equipment that is here all night. There is NO WAY we could save an airplane should a fire start during the night. During the colder winter months we keep agents here all night just to keep the airplane warm. This is done by the APU or a heat truck. We have been very lucky we've not had an APU or heat truck fire.

We, as the Grand Rapids Airline Managers Council, would like to request a review of this shortcoming in our airport coverage. An airport this size, with as many as 10 large aircraft overnighing, needs fire protection 24 hours per day.

We would, also, again like to ask for the painting of SAFETY LINES under and around the loading bridges.

We are asking for trouble with all the men and equipment working around this area.

Awaiting your reply.

Sincerely,

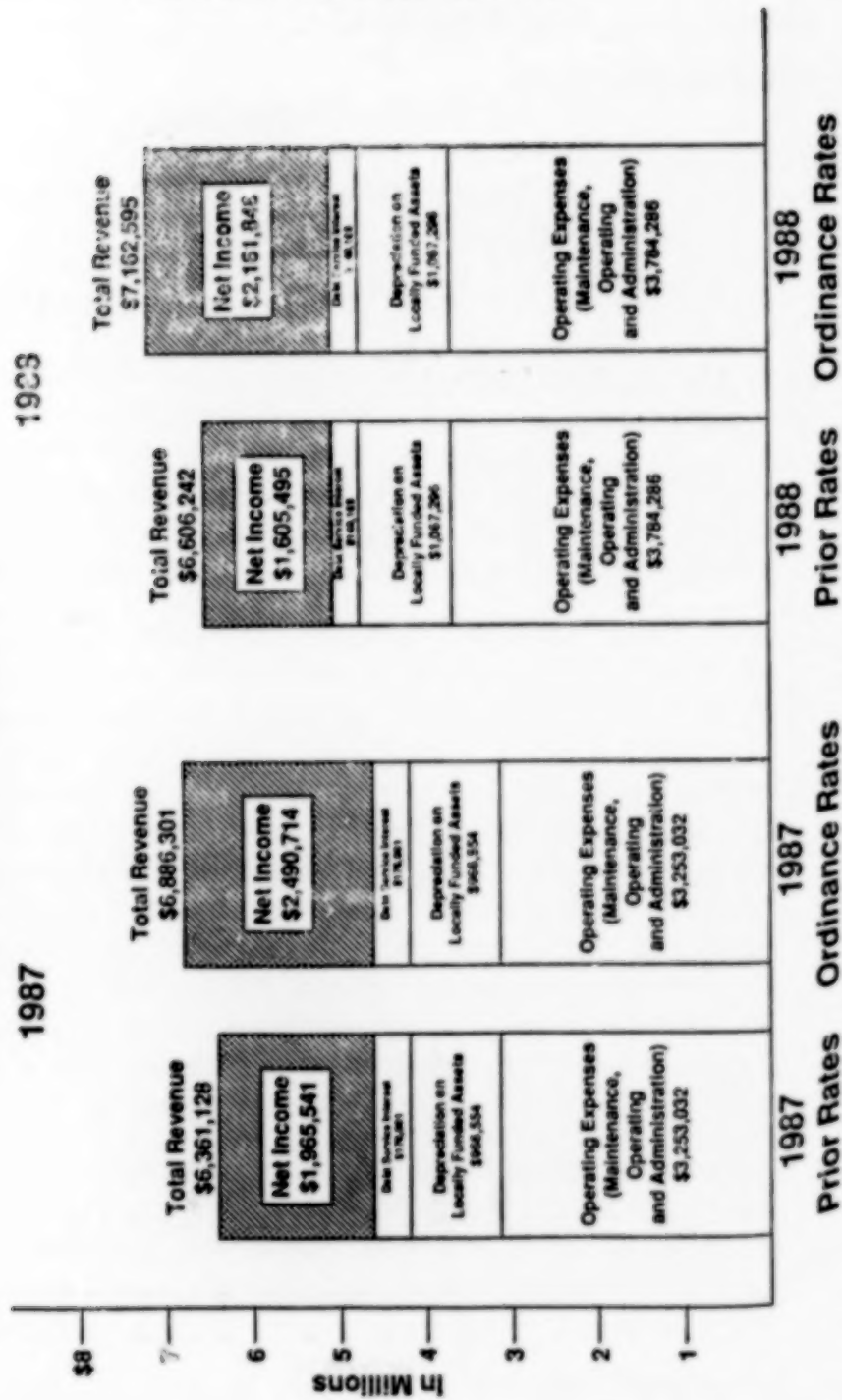
/s/ Jim Haney  
 JIM HANEY  
 President, GRAMC

cc: Mr. Andrew DeKraker  
 All Managers

# GRAND RAPIDS AIRPORT NET INCOME ANALYSIS

278

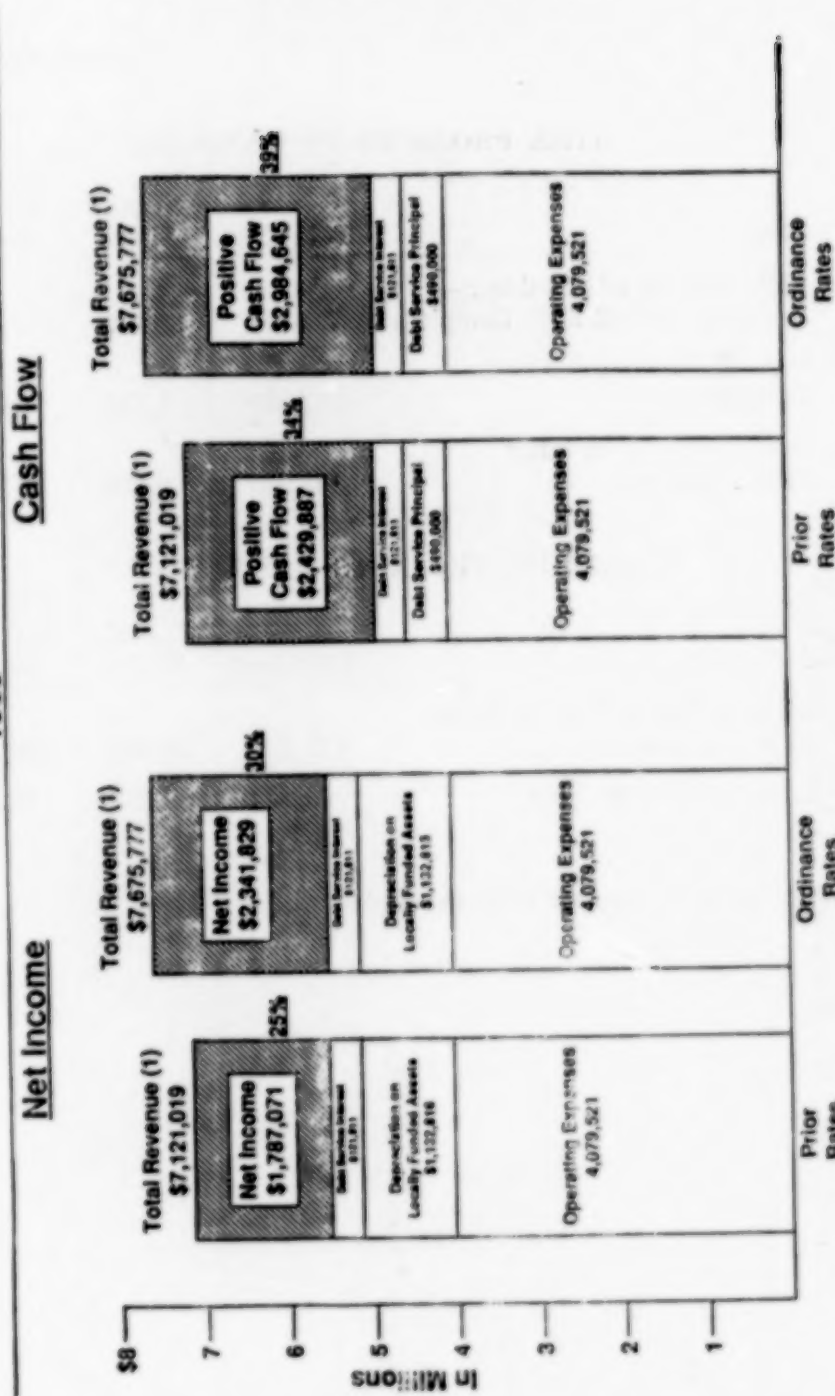
PLAINTIFF'S EXHIBIT 301



279

PLAINTIFF'S EXHIBIT 355

# GRAND RAPIDS AIRPORT NET INCOME and CASH FLOW ANALYSIS



US Includes Estimated Interest Revenue on Restricted Assets of \$377,000

## DEFENDANT'S EXHIBIT DA-23

January 31, 1990

## CAPITAL PROJECTS IN PROGRESS

Project	Total Cost	*Local Share	Federal & State Share
1. C79—Paving of Shoulders—Runway 26L/8R 80% Complete	712,982	35,649	677,333
2. C80—Electric Gates 20% Complete	17,369	1,335	16,034
3. C85—Security Fencing 20% Complete	181,950	9,098	172,852

## PLANNING PROJECTS UNDERWAY

Project	Total Cost	*Local Share	Federal & State Share
1. Airport Master Plan & Noise 24% Complete	313,570	15,678	297,892
2. Heliport Master Plan	99,449	4,972	94,477

\* Local share on deposit with the state

January 31, 1990

ANTICIPATED CAPITAL PROJECTS  
1990 TO 2000

Project	Total Est. Cost (based on 1990 dollars)	*Local Share	**Federal Share
1.A) Rehabilitate Terminal Apron (Concourse A)	\$ 1,200,000	COUNTY STATE \$60,000 \$60,000	\$ 1,080,000
2.A) FAA-GADO, Rapid Air Aprons & Taxiway "G" Extension	\$ 390,000	COUNTY STATE \$31,900 \$7,100	\$ 351,000
3.A) Taxiway Guidance Signs	\$ 60,000	COUNTY STATE \$3,000 \$3,000	\$ 54,000
4.B) Apron Expansion Concourse B (east end)	\$ 650,000	\$ 65,000	\$ 585,000
5.B) Grading & Drainage Along Rwy 8L/26R	\$1,335,000	\$ 133,500	\$ 1,201,500
6.C) Pave, Light & Groove Rwy 8L/26R (7000') and Connecting Taxiways (New Master Study now underway, May substitute extension to 18/36—costs comparable)	\$17,000,000	\$ 1,700,000	\$15,300,000



Project	Total Est. Cost (based on 1990 dollars)	*Local Share	**Federal Share
7.D) Apron Expansion Concourse B (north side)	\$ 1,700,000	\$ 170,000	\$ 1,530,000
8. Centerline & Touchdown Lights Rwy 8R/26L	\$ 2,000,000	\$ 200,000	\$ 1,800,000
9. Airport Access Control System—Required Under FAR 107 (Must be in place by 1992)	\$ 900,000	90,000	810,000
10. Wildlife Management Program—Required under FAR 139 (FAA Requested we develop plan under current Master Plan Study to minimize deer and bird hazards to aircraft)	\$ 250,000	\$ 25,000	\$ 225,000
11.E) Land Acquisitions (Esraugh 8A ± and Basset Property 20 A + and Weber Property (1A ±))	\$	NOT KNOWN	
Future Land Acquisition Program to be Developed	\$	NOT KNOWN	
12. New G.A. Ramp @ Rapid Air.	\$ 250,000	\$ 25,000	\$ 225,000
Aero Med—Roads— Connecting Taxiway	\$ 100,000	\$ 100,000	
	\$ 175,000	\$ 17,500	\$ 157,500
13. Airfield Maintenance Equip. (Mowers, end loaders utility vehicles & snow plows not subject to federal funding.)	\$ 900,000	\$ 900,000	

282

14. Snow Plows & Blower (FAA Eligible)	\$ 700,000	\$ 70,000	\$ 630,000
15. Hold Rooms North Side concourse B (to serve Item #1 & 4)	\$ 1,500,000	\$ 750,000	\$ 750,000
16. Expand ticket wing to east (100' x 135)	\$ 1,700,000	\$ 850,000	\$ 850,000
17. Auto Parking Surface (1,000 cars)	\$ 600,000	\$ 600,000	
18.C) Parking Garage—700 car	\$ 4,900,000	\$ 4,900,000	
19. Parking Lot Shuttle Buses (3)	\$ 75,000	\$ 75,000	
20. Replace ARFF Vehicles one-2,500 gallon and one-500 gallon (required under FAR 139)	\$ 510,000	\$ 51,000	\$ 459,000
21.F) Federal Express Freight Building	\$ 740,000	\$ 740,000	
22.F) Emery Freight Building Addition	\$ 600,000	\$ 600,000	
23.F) Aero Med Hangar	\$ 750,000	\$ 750,000	
24. Motel Expansion (Approved by Aeronautics Board) (Implementation Questionable)	\$ 1,000,000	\$ 1,000,000	
25.F) FAA—FSDO Building	\$ 700,000	\$ 700,000	
26. Computer Systems	\$ 300,000	\$ 300,000	
27. Secondary Water Service to Airport (3,600')	\$ 180,000	\$ 180,000	

283

Project	Total Est. Cost (based on 1990 dollars)	*Local Share	**Federal Share
28. Alternate Main Power Feed to Airport (3,600')	\$ 120,000	\$ 120,000	
29. Alternate Freight Area (to be determined in new Master Plan)	\$ 2,160,000	\$ 216,000	\$ 1,944,000
TOTAL ***	\$43,445,000	\$15,493,000	\$27,952,000

\* Estimated Cost to Implement Would Include Any State Participation for Federal Projects

\*\* Eligible for Federal Aid Under Current AIP Program (ends October 1992). The amount of participation from the FAA will be limited to the amount of Federal monies available at time of request.

\*\*\* Not including land acquisition costs from item 11 above

- A) Under Federal Grant, plans being developed for 1990 construction season.
- B) Federal Grant applied for
- C) This improvement contained in 1983 Master Plan approved by the FAA.
- D) Submitted to MAC in our 5 year development, dated March 20, 1989.
- E) Negotiations for purchase underway.
- F) Lease negotiations underway for construction

## REVISION DATE - 02/07/91.

ASSOCIATED CITY GRAND RAPIDS	STATE MI	IP165 NO. 26-0039	SITE NO. 09852. A
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COUNTY CODE 081 KENT	BMISA 3000	AIRPORT KENT COUNTY INTERNATIONAL CODE 808 HUB 8 REGION 0L FED AGREE	REVISION DATE 02/07/90	OWNER RUB	CURBSTRUCTION U
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PLANS COMPLETED		SITE NO.	CURRENT CAPACITY
ALP - 84	AIRPORT RELIEVED -		ANNUAL OPS
MASTER - U	AIRPORT REPLACED -		320,000
METRO -	AIRPORT SUPPLMNT -		HOURLY OPS
REGION -	CROSS REFERENCE -		VFR - 149
STATE - 89	NEW AIRPORT -		IFR - 57
	SPECIAL LOCATION -		

## AIRPORT ROLE - LEVEL OF SERVICE

SVC	LVL	AIRPORTS WITH SCHEDULED SERVICE				ALL AIRPORTS							ANNUAL TIN	UPS 1000 TOT
		STAGE LENGTH	ACFT TYPE	ANNUAL ENP X1000	DPS	AIR TAXI ENP X100	SPECIAL FLIGHTS PROJ	RUNWAY LENGTH	FED INT	DESIGN TYPE	BASED ACFT	INSTN TIN		
C	PR	B	TP	724	45			200	MAIL	TR	159	1	105	143
1-5	PR	E	TP	694	59			100	MAIL	TR	160	1	150	176
6-10	PR	S	TP	1036	71	325		200	MAIL	TR	167		158	184

## ELIGIBLE AIRPORT DEVELOPMENT COSTS (X \$1000)

DEVELOPMENT INCLUDES 1-3 YR. 6-10 YR. NEW RUNWAYS	BL-26R
RUNWAY EXTENSIONS	18-36

	LAND-B	LAND-N	PAVING LIGHTING	APPROACH AIDS	TERMINAL	OTHER	TOTAL
1-5 Yr.	2000	2000	11060	200	300	4020	19590
6-10 Yr.	2000	1000	11170	200	1000	2200	20670

	BOILER SLURRY	RETORT STRUCTURE	STANDARD SIZES	ENVIRON- MENT	UPGRADE	CAPACITY	NEW CAPACITY
1-5 YR.	720	3510	1150	2000		1500	
6-10 YR.	1060	4000	3260	1000		10670	

I, Jean C. Fritz, hereby certify that I am the Supervisor of the Michigan Section of the Detroit Airports District Office of the Great Lakes Region, Federal Aviation Administration, and that this document is an official record filed in this public office, that the content is correct, and that I am the custodian of this document and am authorized to make this certification.

Dean C. Nitz

Approved By *Shawc mty*  
*Shawc mty*  
 Detroit Airport Liaison Office  
 Federal Aviation Administration  
 Date *2/7/90*

**THE UNIVERSITY OF CHICAGO PRESS**

PLAN	DATE	PLANNING ITEMS	ENGINEER	AMOUNT	FISCAL YEAR	COM- PLETED	USER	DATE	DESCRIPTION
3-9	92/07/90	CA	AP	70	89	Y	EGU	AGL-DET	CONST GA AFRON
		CA	AP	140	89	Y	EGU	AGL-DET	EXPAND GA AFRON
		EC	AP	1000	89	Y	EGU	AGL-DET	REHAB. AFRON
		BA	OT	70	89	Y	EGU	AGL-DET	SECURITY FENCE
		ST	LI	100	89	Y	EGU	AGL-DET	TX & NAV GUIDANCE SIGNS
		ST	LI	135	89	Y	EGU	AGL-DET	CONST. CON. TX & TX S
		CA	OT	700	90	Y	EGU	AGL-DET	EXPAND TERMINAL AFRON
		SA	AP	200	90	N	EGU	AGL-DET	REPLACE SRE
		SA	OT	400	90	N	EGU	AGL-DET	SECURITY CARD SYSTEM
		SA	OT	80	90	N	EGU	AGL-DET	SECURITY FENCE
		ST	LD	1000	90	N	EGU	AGL-DET	LAND DEVELOPMENT
		ST	OT	1400	90	N	EGU	AGL-DET	DRAINAGE IMPROVEMENTS
		ST	TX	300	90	N	EGU	AGL-DET	CONST. CON. TX
		CA	AP	300	91	N	EGU	AGL-DET	EXPAND GA AFRON
		CA	TE	200	91	N	EGU	AGL-DET	FLB
		CA	TX	200	91	N	EGU	AGL-DET	CONST. TX STR
		CA	LM	1000	91	N	EGU	AGL-DET	LAND NOISE
		RE	AP	1000	91	N	EGU	AGL-DET	REHAB. AFRON
		ST	LD	1000	91	N	EGU	AGL-DET	LAND DEVELOPMENT
		ST	LI	150	91	N	EGU	AGL-DET	ELECT. VOLT. EQUIP
		EM	LM	1000	92	N	EGU	AGL-DET	LAND NOISE
		ST	OT	200	92	N	EGU	AGL-DET	UTILITY RELOCATION
		ST	OT	1000	92	N	EGU	AGL-DET	AD RELOCATION
		ST	OT	300	92	N	EGU	AGL-DET	OBST. REMOVAL
		ST	OT	150	93	N	EGU	AGL-DET	SECURITY FENCE
		ST	AA	100	93	N	EGU	AGL-DET	TX 18/26 VADL
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ST	LI	150	93	N	EGU	AGL-DET	TX 18/26 VADL		
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**DEFENDANTS' EXHIBIT DA-35B**

## ASSURANCES

### Airport Sponsors

### A. General

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants to airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or the Aviation Safety and Noise Abatement Act of 1979. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes public agency sponsors and private sponsors.
3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

### B. Duration and Applicability

1. **Airport Development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty(20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no

PLAN	DATE	FL. AMOUNTS. CAT.	ENGINEERS. FEE	AMOUNT	FISCAL YEAR	COPY FILED	USER ID	OFFICE	DESCRIPTION
8-10 VR	02/08/89	CA	TR	1500		N	100	ADA DE I	CONST. FOR TX BL/204 (6050 X 75)
	02/08/89	CA	TR	500		N	100	ADA DE I	
	02/08/89	EN	LN	10000		N	100	ADA DE I	LAND NOISE (150 AC)
	02/08/89	FE	AP	2000		N	100	ADA DE I	REPAIR ASPHALT
	02/08/89	KE	LI	2000		N	100	ADA DE I	REPAIR PTL & STONS
	02/08/89	LE	OT	5000		N	100	ADA DE I	REPLACE SFR
	02/08/89	KE	TE	10000		N	100	ADA DE I	REPAIR REPAIR
	02/08/89	SA	TR	5000		N	100	ADA DE I	REPAIR LA
	02/08/89	SA	OT	10000		N	100	ADA DE I	SECURITY FENCE
	02/08/89	SA	OT	2000		N	100	ADA DE I	ADPT BUILD EXPANSION
	02/08/89	SI	LI	3000		N	100	ADA DE I	ADPT EQUIP.
	02/07/90	SI	LI	3000		N	100	ADA DE I	14 GUINNESS STONS
	02/08/89	SI	LI	3000		N	100	ADA DE I	T02 & CL LIGHTS RM BR/204
	02/08/89	SI	OT	5000		N	100	ADA DE I	ELEC VARY EQUIP
	02/08/89	SI	OT	10000		N	100	ADA DE I	REPAIR IMPROVEMENTS
	02/08/89	SI	OT	10000		N	100	ADA DE I	SPE BUILD EXPANSION
	02/08/89	SI	OT	20000		N	100	ADA DE I	REPAIR TERN RD
			TOTAL						

I, Dean C. Mitz, hereby certify that I am the Supervisor of the Michigan Section of the Detroit Airports District Office of the Great Lakes Region, Federal Aviation Administration, and that this document is an official record filed in this public office, that the document is correct, and that I am the custodian of this document and am authorized to make this certification.

Dean C. Nitz

limit on the duration of the assurance against exclusive rights or the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be as specified in the assurance.

2. Airport Development or Noise Compatibility Program Projects Undertaken by a Private Sponsor. The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than 10 years from the date of the acceptance of Federal aid for the project.

3. Airport Planning Undertaken by a Sponsor. Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements. It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

#### Federal Legislation

- a. Federal Aviation Act of 1958—49 U.S.C. 1301, et seq.
- b. Davis-Bacon Act—40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act—29 U.S.C. 201, et seq.
- d. Hatch Act—5 U.S.C. 1501, et seq.<sup>2</sup>

- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—42 U.S.C. 4601, et seq.<sup>1 2</sup>
- f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974—16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4012a.<sup>1</sup>
- i. Rehabilitation Act of 1973—29 U.S.C. 794.
- j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d through d-4.
- k. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, et seq.
- l. Age Discrimination Act of 1975—42 U.S.C. 6101, et seq.
- m. Architectural Barriers Act of 1968—42 U.S.C. 4151, et seq.<sup>1</sup>
- n. Airport and Airway Improvement Act of 1982, as amended 49 U.S.C. 2201, et seq.
- o. Powerplant and Industrial Fuel Use Act of 1978—Section 403—2 U.S.C. 8373.<sup>1</sup>
- p. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, et seq.<sup>1</sup>
- q. Copeland Antikickback Act—18 U.S.C. 874.<sup>1</sup>
- r. National Environmental Policy Act of 1969—42 U.S.C. 4321, et seq.<sup>1</sup>
- s. Endangered Species Act—16 U.S.C. 668(a), et seq.<sup>1</sup>
- t. Single Audit Act of 1984—31 U.S.C. 7501, et seq.<sup>2</sup>

- u. Drug-Free Workplace Act of 1988—41 U.S.C. 702 through 706.

#### Executive Orders

Executive Order 12372—Intergovernmental Review of Federal Programs

Executive Order 11246—Equal Employment Opportunity<sup>1</sup>

#### Federal Regulations

- a. 49 CFR Part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.<sup>3</sup>
- b. 49 CFR Part 21—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.
- c. 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs.
- d. 49 CFR Part 24—Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs.<sup>1 2</sup>
- e. 49 CFR Part 27—Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.<sup>1</sup>
- f. 49 CFR Part 29—Debarments, Suspensions, and Voluntary Exclusions.
- g. 49 CFR Part 30—Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.

- h. 29 CFR Part 1—Procedures for Predetermination of Wage Rates.<sup>1</sup>
- i. 29 CFR Part 3—Contractors or Subcontractors on Public Buildings or Public Works Financed in Whole or Part by Loans or Grants from U.S.<sup>1</sup>
- j. 29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.<sup>1</sup>
- k. 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted Contracting Requirements).<sup>1</sup>
- l. 14 CFR Part 150—Airport Noise Compatibility Planning.

#### Office of Management and Budget Circulars

- a. A-87—Cost Principles Applicable to Grants and Contracts with State and Local Governments.<sup>3</sup>
- b. A-128—Audits of State and Local Governments.<sup>2</sup>

<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and local governments receiving Federal assistance. Any requirement levied upon State and local governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under the Airport and Airway Improvement Act of 1982, as amended.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

#### 2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor: It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the



applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with the application; and to provide such additional information as may be required.

3. **Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

#### 4. **Good Title.**

a. It holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

#### 5. **Preserving Rights and Powers.**

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions,

and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims or right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under the Airport and Airway Improvement Act of 1982 to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions and assurances contained in this grant agreement.

c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance with the Airport and Airway Improvement Act of 1982, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.

6. Consistency with Local Plans. The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. For noise compatibility program projects, other than land acquisition, to be carried out on property not owned by the airport and over which property another public agency has land use control or authority, the sponsor shall obtain from each such agency a written declaration that such agency supports that project and the project is reasonably consistent with the agency's plans regarding the property.

7. Consideration of Local Interest. It has given fair consideration to the interest of communities in or near which the project may be located.

8. Consultation with Users. In making a decision to undertake any airport development project under the Airport and Airway Improvement Act of 1982, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings. In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community. It shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary.

10. Air and Water Quality Standards. In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

11. Local Approval. In projects involving the construction or extension of any runway at any general aviation airport located astride a line separating two counties within a single state, it has received approval for the project from the governing body of all villages incorporated under the laws of that state which are located entirely within five miles of the nearest boundary of the airport.



12. **Terminal Development Prerequisites.** For projects which include terminal development at a public airport, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 612 of the Federal Aviation Act of 1958 and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning or deplaning from aircraft other than air carrier aircraft.

13. **Accounting System, Audit, and Recordkeeping Requirements.**

a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

14. **Minimum Wage Rates.** It shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. **Veteran's Preference.** It shall include, in all contracts for work on any projects funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in Section 515 (c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval by the Secretary, shall be incorporated into this grant agreement. Any modifications to the approved plans, specifications, and schedules shall also be subject to approval by the Secretary and incorporation into the grant agreement.

17. **Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms with the plans, specifications, and



schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects. In carrying out planning projects:

a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.

b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

a. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for nonaeronautical purposes must first be approved by the Secretary. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.

In furtherance of this assurance, the sponsor will have in effect at all times arrangements for—

(1) Operating the airport's aeronautical facilities whenever required;

(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring

the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitable operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use. It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

## 22. Economic Nondiscrimination.

a. It will make its airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical uses.

b. In any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct

or engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to—

(1) furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to serve itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and which utilize similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory carriers and nonsignatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classifications or status.



f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the sponsor under these provisions.

h. The sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights. It will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm or corporation

the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982.

24. Fee and Rental Structure. It will maintain a fee and rental structure consistent with Assurance 22 and 23, for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate base in establishing fees, rates, and charges for users of that airport.

25. Airport Revenue. If the airport is under the control of a public agency, all revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes



on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

26. Reports and Inspections. It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request. For airport development projects, it will also make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request. For noise compatibility program projects, it will also make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

27. Use of Government Aircraft. It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the

sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that—

a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movements of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities. It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions

of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plan and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or in any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport.

b. If a change or alteration in the airport or its facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

30. Civil Rights. It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures

or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possession of the property.

### 31. Disposal of Land.

a. For land purchased under a grant before, on, or after December 30, 1987, for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States share of acquisition of such land will, at the discretion of the Secretary, 1) be paid to the Secretary for deposit in the Trust Fund or 2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.

b. For land purchased for airport purposes (other than noise compatibility) under a grant before, on, or after December 30, 1987, it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value. That portion of the proceeds of such disposition, which is proportionate to the United States share of the cost of acquisition of such land will be paid to the Secretary for deposit in the Trust Fund.

c. Disposition of such land under a. and b. above will be subject to the retention or reservation on any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport.

32. Engineering and Design Services. It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies,



architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. **Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. **Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the "Current FAA Advisory Circulars for AIP Projects," dated \_\_\_\_\_ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

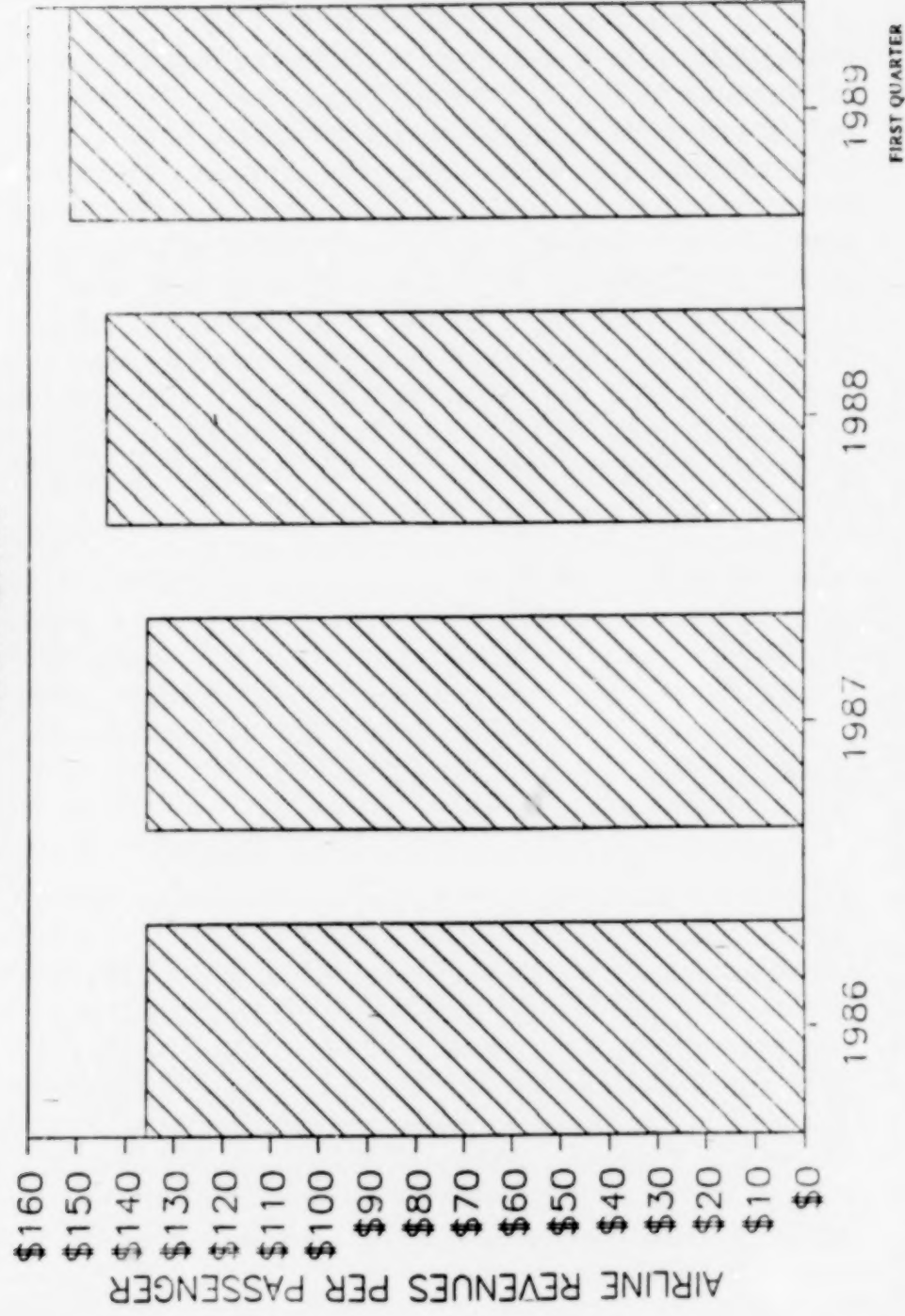
35. **Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subparts D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. **Drug-Free Workplace.** It will provide a drug-free workplace at the site of work specified in the grant application in accordance with 49 CFR Part 29 by (1) publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against its employees for violation of such prohibition; (2) establishing a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace and any available drug counseling, rehabilitation, and employees assistance programs; (3) notifying the FAA within ten days after receiving notice of an employee criminal drug statute conviction for a violation occurring in the workplace; and (4) making a good faith effort to maintain a drug-free workplace.



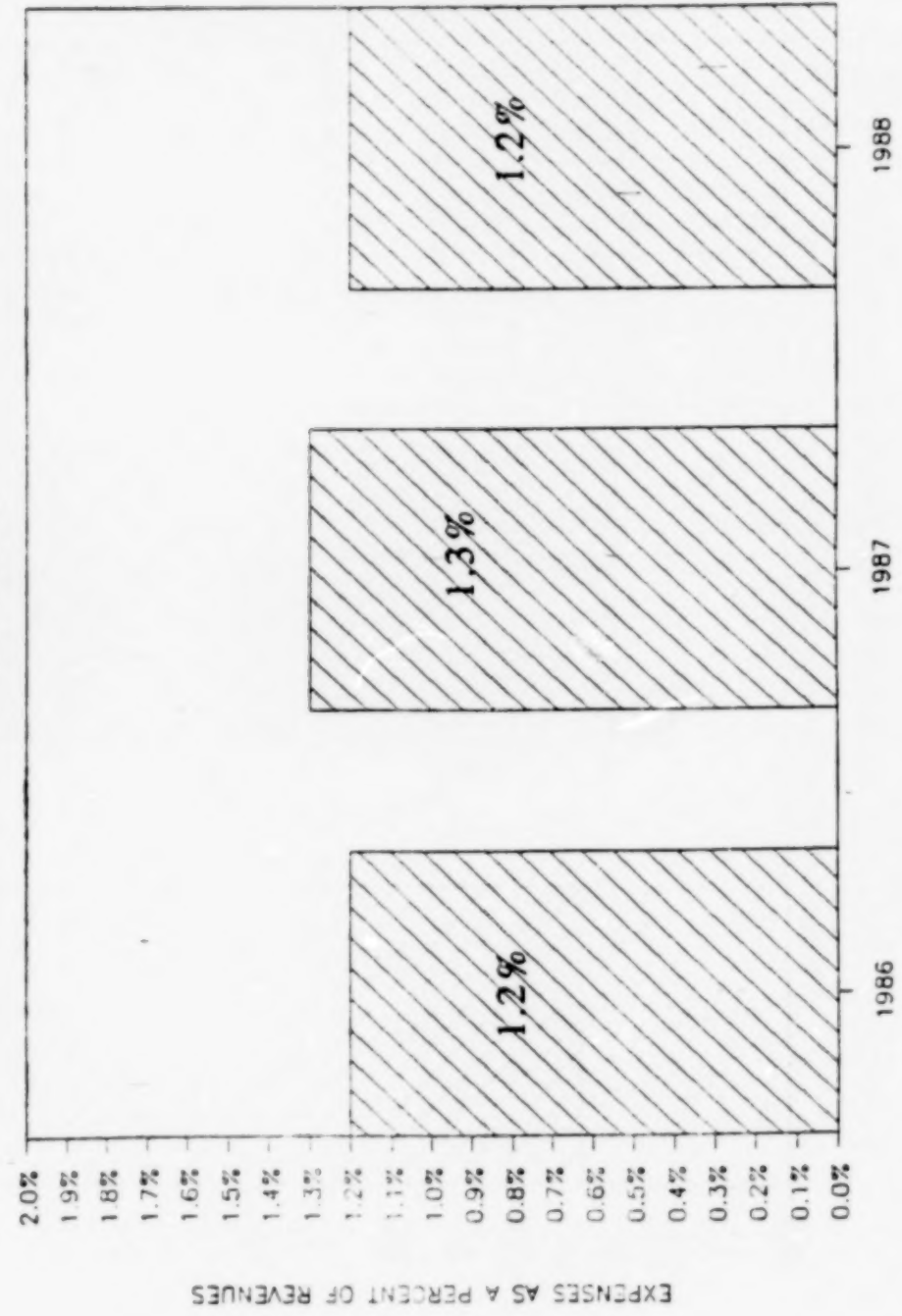
## DEFENDANT'S EXHIBIT DA-36

AIRLINE REVENUES PER PASSENGER  
GRAND RAPIDS

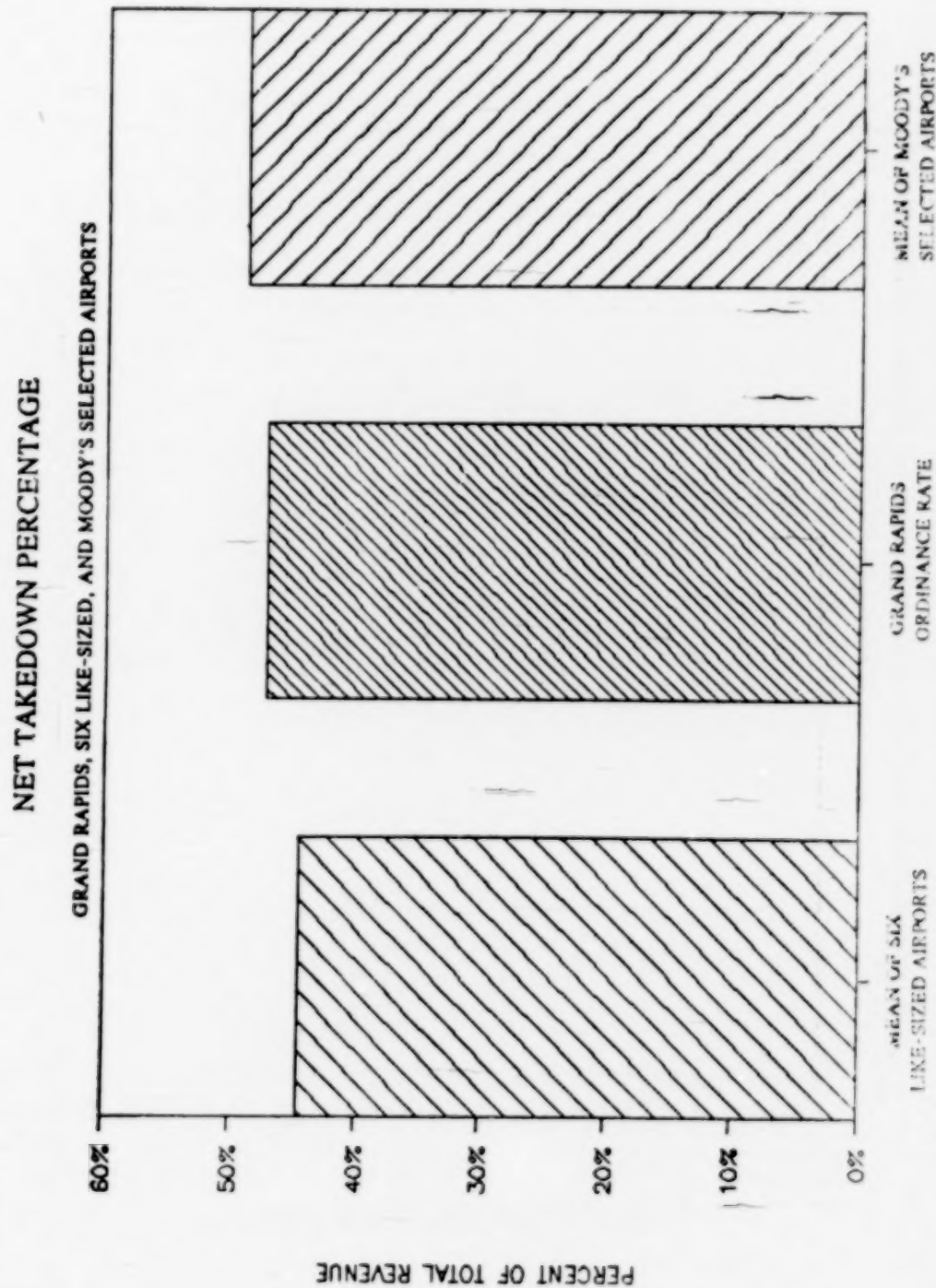


## DEFENDANT'S EXHIBIT DA-37

AIRLINE/AIRPORT EXPENSES AS PERCENT OF PASSENGER REVENUES  
GRAND RAPIDS



## DEFENDANT'S EXHIBIT DA-42



**NET REVENUES AS % OF TOTAL REVENUES**  
**GRAND RAPIDS AND SIX LIKE-SIZED AIRPORTS**  
**1988**

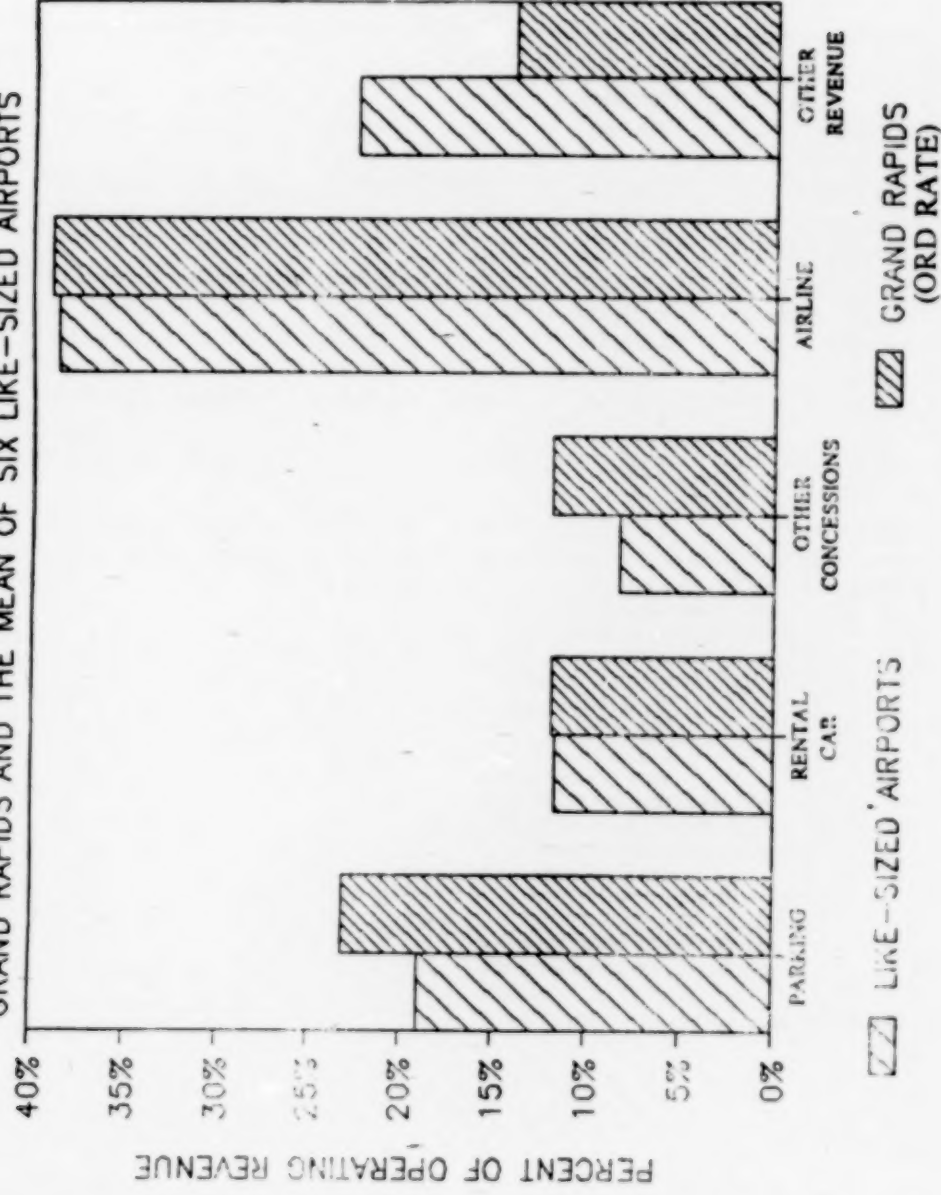
Airport	Operating Revenues	Interest Income	Total Revenues	Operating Expenses	Net Revenues	Net Revs As % of Total Revs
Des Moines	\$7,667,189	N/A	\$7,667,189	\$3,821,382	\$3,845,807	50.2%
Charleston	8,508,570	816,591	9,325,161	3,477,568	5,847,593	62.7
Colorado Springs	4,060,023	1,212,856	5,272,879	2,040,385	3,232,494	61.3
GRR- <u>Present</u>	5,943,107	657,497	6,600,604	3,784,286	2,816,318	42.7
GRR- <u>Ordinance</u>	6,519,580	657,497	7,177,077	3,784,286	3,392,791	47.3
Wichita	23,616,492	2,119,734	25,736,226	20,154,871	5,581,355	21.7
Spokane	7,320,613	222,063	7,542,676	5,104,452	2,438,224	32.3
Midland	4,559,193	N/A	4,559,193	2,774,893	1,784,300	39.1
MEAN	9,288,680	1,092,811	10,017,721	6,228,925	3,788,795.5	44.55
MEDIAN	7,493,901	1,014,723	7,604,932.5	3,649,475	3,539,201	44.65

SOURCE: Col. (1), (2) & (4) - DSM - Financial Summary by Year, FY1988.  
 CHS - 1988 Annual Report, Exhibit "B".  
 COS - Financial Statement, Dec. 31, 1988, pg. 92.  
 GRR - Present - Financial Statement, Dec. 1988, pgs. 14 & 16.  
     Ordinance - Present = \$5,943,107  
     (Table 1) Less Airline Costs 1,967,445  
     C-19-1-1029.02 3,975,662  
     Plus Pro Forma Airline Costs 2,543,918  
     Table 2A 1988 Pro Forma \$6,519,580  
 ITC - Annual Report CY1988, Pg. 18.  
 GEG - Financial Statement CY1988, pg. 17.  
 MAF - Non-GAAP Statement  
     Col. (4) - Expense less Debt Service

Col. (3) - Col. (1) plus Col. (2).  
 Col. (5) - Col. (3) minus Col. (4).  
 Col. (6) - Col. (5) divided by Col. (3).

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# REVENUE CATEGORY AS % OF OPERATING REVENUE GRAND RAPIDS AND THE MEAN OF SIX LIKE-SIZED AIRPORTS



316

DEFENDANT'S EXHIBIT DA-43

## REVENUES BY CATEGORY AS % OF TOTAL OPERATING REVENUES GRAND RAPIDS AND SIX LIKE-SIZED AIRPORTS CALENDAR OR FISCAL YEAR 1988

City	Enplaned Passengers	Parking Revenues	% of Total Operating Revenues	Rent-A-Car Revenues	% of Total Operating Revenues	Other Concessions Revenues	% of Total Operating Revenues	Airline Revenues	% of Total Operating Revenues	Other Revenues	% of Total Operating Revenues	Total Operating Revenues
DSM	3708,471	\$1,551,760	20.2%	\$753,766	9.9%	\$493,580	6.4%	\$3,690,625	48.1%	\$1,177,058	15.4%	\$7,667,189
CHS	662,392	1,422,232	16.7	1,321,939	15.5	374,002	4.4	3,571,940	42.0	1,818,157	21.4	8,508,570
COS	641,126	852,952	15.6	844,314	15.5	278,172	5.1	1,518,406	27.8	1,966,553	36.0	5,460,397
GRR-A	596,869	1,509,702	25.4	775,565	13.0	775,553	13.0	1,967,455	33.2	914,832	15.4	5,943,107
GRR-P	596,869	1,509,702	23.2	775,565	11.9	775,553	11.9	2,543,918	39.0	914,832	14.0	6,519,570
ITC	602,349	1,125,776	12.3	871,536	9.6	1,520,840	16.7	2,503,705	27.5	3,097,939	33.9	9,117,796
GEG	744,014	1,355,282	18.5	635,052	8.7	669,210	9.1	3,962,107	54.1	697,922	9.5	7,320,613
MAF	602,286	1,787,008	39.2	572,005	12.5	173,007	3.8	1,200,736	26.3	826,357	18.1	4,559,193
•MEAN	3,960,638	8,094,090	19.0	4,998,652	11.7	3,509,611	8.2	16,447,419	38.6	9,583,986	22.5	42,633,758
MEDIAN	651,759	1,392,257	18.7	799,040	10.7	434,191	5.8	3,037,772.5	40.5	1,497,607.5	20.0	7,493,901

NOTE: <sup>1</sup> Less Aviation Fuel Sales.

DSM = Des Moines.

CHS = Charleston.

COS = Colorado Springs.

GRR-A = Grand Rapids-Actual.

GRR-P = Grand Rapids-Proforma.

ITC = Wichita.

GEG = Spokane.

MAF = Midland.

SOURCE: Col(1) - Airport Activity Statistics of Certificated Route Air Carriers, CY1988.

Col(2), (4), (6), (8), (10) & (12) - Audited Financial Statements and Financial Data provided by airports.

Col(3) - Col(2) divided by Col(12).

Col(5) - Col(4) divided by Col(12).

Col(7) - Col(6) divided by Col(12).

Col(9) - Col(8) divided by Col(12).

Col(11) - Col(10) divided by Col(12).

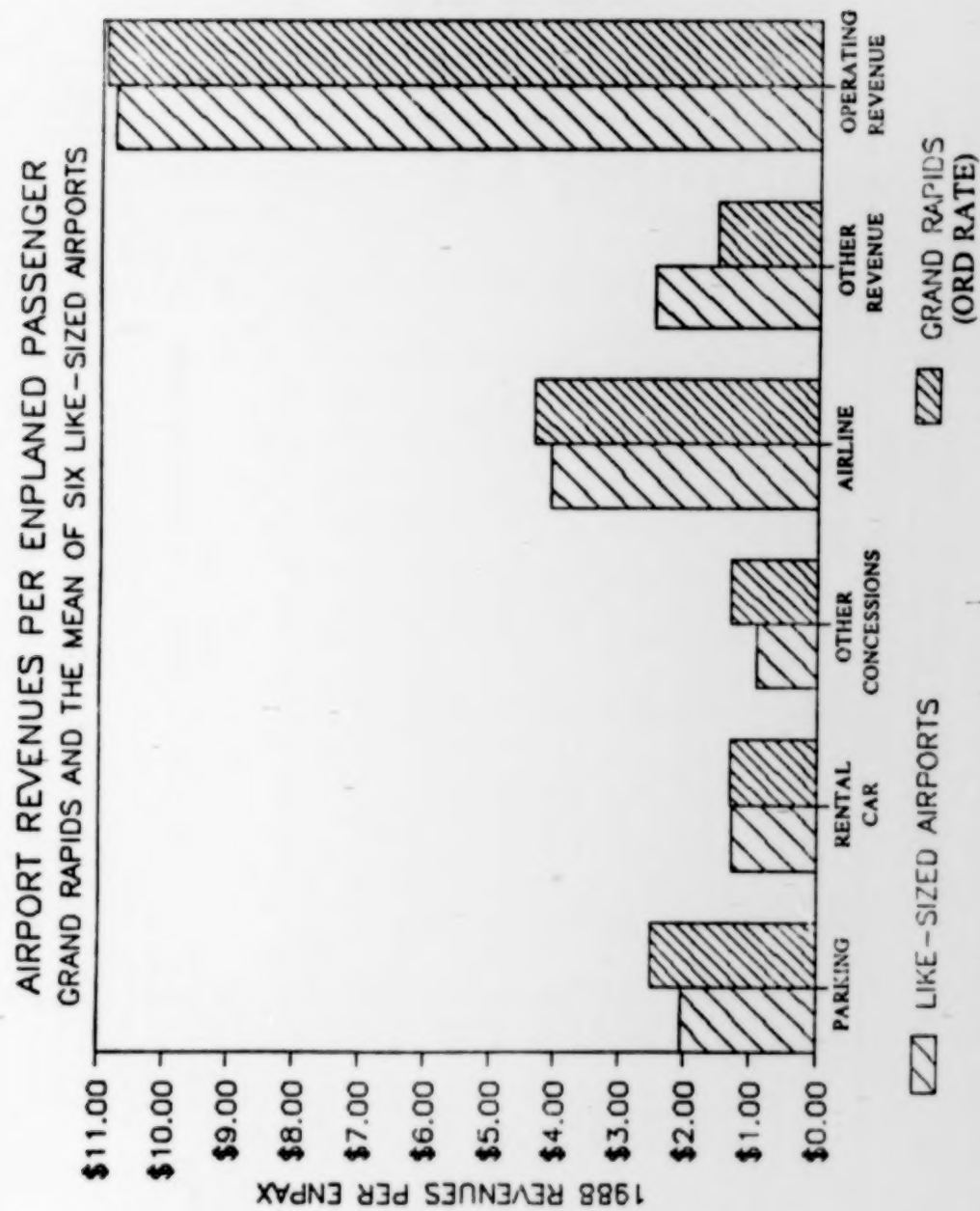
Col(13) - Col(12) divided by Col(12).

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317



## DEFENDANT'S EXHIBIT DA-44



REVENUE PER ENPLANED PASSENGER  
GRAND RAPIDS AND SIX LIKE-SIZED AIRPORTS  
— CALENDAR OR FISCAL YEAR 1988

City	Revenues Per Enplaned Passenger					Total
	Parking	Rent-A-Car	Concessions	Airline	Other	
Des Moines	\$2.19	\$1.06	\$ .70	\$5.21	\$1.66	\$10.82
Charleston	2.15	2.00	.57	5.39	2.74	12.85
Colorado Springs	1.33	1.32	.43	2.37	3.07	8.52
GRR - Actual	2.53	1.30	1.30	3.30	1.53	9.96
GRR - ProForma	2.53	1.30	1.30	4.33	1.53	10.92
Wichita	1.87	1.45	2.52	4.16	5.14	15.13
Spokane	1.82	.85	.90	5.33	.94	9.84
Midland	2.97	.95	.29	1.99	1.37	7.57
MEDIAN	\$2.01	\$1.19	\$ .635	\$4.685	\$2.20	\$10.33
MEAN	2.04	1.26	.89	4.15	2.42	10.76

SOURCE: Enplaned Passengers & Revenues from attached table.

## DEPOSITION EXHIBIT DX-I

## UNITED AIRLINES

[Logo]

December 22, 1983

Mr. Robert Ross, A.A.E.  
 Director of Aeronautics  
 Kent County Int'l. Airport  
 5500 44th Street, S.E.  
 Grand Rapids, MI 49508

Dear Bob:

In response to your letter of December 14 on airline rates and charges for 1984, let me begin by expressing the airlines' appreciation for the work that Steve Turows did on the information package and also for the time that you and your staff took to review this proposal with us on December 16.

The representatives of United, Republic and Northwest have reviewed and are in agreement with your proposal for a one-year extension to bridge the period until the terminal expansion project is completed. We also agree with your proposal to set the building rental rates at \$18/sf and \$10.50/sf as outlined in your letter.

After a thorough review of all the materials presented, the carriers request that the landing fee rate for 1984 be set at 46¢ per thousand pounds of landing weight versus your proposal of 50¢ for the following reasons:

1. The detailed analysis performed by Steve Turows concluded that a rate of 44¢ was required. The airlines, using the same methodology and revenue requirement but adjusting the landed weight projection for United and Republic calculate a 46¢ fee as required.
2. The proposed rate of 50¢ is recognized as no rate increase over 1983. However, the landed weight fore-

cast for 1984 is approximately 25% over 1983, which will generate nearly \$200,000 more revenue even at the same rate. We believe this is more than the increase in revenue required. Also, we are all aware that when the 1983 rate was negotiated in late 1980, Grand Rapids was served by only United and Republic. The airlines should benefit from this large landed weight increase by a rate reduction as the airport and concessionaires have no doubt benefited by revenue increases in 1982 and 1983.

3. While the airport's desire to maintain a financial cushion due to the current instability of the air transportation industry is understood, we would point to the fact that the airport has a cash balance in excess of \$4 million to providing adequate security for any landed weight shortfall. We have also heard that American Airlines is planning to start service to Grand Rapids in early 1984.

Attached is a short list of requested revisions to the airline agreement handed out at our December 16 meeting for use by your legal counsel.

In summary, the airlines respectfully request that the 1984 landing fee rate be set at 46¢ per thousand pounds of landed weight as being a fair and equitable rate along with the rental rates proposed in your letter of December 14, and favorable consideration by the Kent County Aeronautics Board would be appreciated.

Very truly yours,

/s/ John Sorensen  
 JOHN SORENSEN  
 Chairman  
 Grand Rapids AAAC

JS:jg  
 Attch.

cc: Grand Rapids AAAC Members

# DEPOSITION EXHIBIT DX-PP

	Total Landing Fee	Total Weight	Landing Fee Per 1,000 Lbs.	Total Passengers	Landing Fee Per Passenger
1981	\$442,152	884,304,000 #	.45	702,530	.57
1982	555,374	1,110,748,000 #	.477	740,226	.72
1983	756,115	1,512,228,000 #	.5056	989,808	.77
1984	732,906	1,465,812,000 #	.50	1,040,007	.70
1985	767,291	1,534,582,000 #	.50	1,197,060	.64
1986	810,202	1,620,404,000 #	.50	1,243,627	.65
1987	623,502	1,247,004,000 #	.50	1,141,255	.55

thru Oct.